रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
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WEEKLY

सं. 23] नई दिल्ली, जून 1—जून 7, 2014, शनिवार/ज्येष्ठ 11—ज्येष्ठ 17, 1936
No. 23] NEW DELHI, JUNE 1—JUNE 7, 2014, SATURDAY/JYAISTHA 11—JYAISTHA 17, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

गृह मंत्रालय

(राजभाषा विभाग)

नई दिल्ली, 3 जून, 2014

का.आ. 1609.—राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10(4) के अनुसरण में केंद्र सरकार पेयजल एवं स्वच्छता मंत्रालय को जिसके 80 प्रतिशत से अधिक अधिकारियों एवं कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[सं. 12022/2/2013-रा.भा./का.-2]

हरिन्द्र कुमार, निदेशक (का.)

MINISTRY OF HOME AFFAIRS

(Department of Official Language)

New Delhi, the 3rd June, 2014

S.O. 1609.—In pursuance of Rule 10(4) of the Official Language (Use for official purposes of the Union) Rule 1976, the Central Government hereby notifies Ministry of Drinking Water and Sanitation Affairs, where more than 80% staff has acquired the working knowledge of Hindi.

[No. 12022/2/2013-OL/Impl.-II]

HARINDER KUMAR, Director (Implementation)

नागर विमानन मंत्रालय

(एएआई अनुभाग)

नई दिल्ली, 24 मार्च, 2014

का.आ. 1610.—भारतीय विमानपत्तन प्राधिकरण अधिनियम, 1994 (1994 का संख्या 55) के खण्ड-3 में अंतर्विष्ट शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा तत्काल प्रभाव से श्री एस. मचेन्द्रनाथन, भूतपूर्व एसएस एण्ड एफए, नागर विमानन मंत्रालय के स्थान पर सुश्री एम. सत्यवती, अपर सचिव एवं वित्त सलाहकार, नागर विमानन मंत्रालय को भारतीय विमानपत्तन प्राधिकरण बोर्ड में अंशकालीन सदस्य के रूप में नियुक्त करती है।

[सं. एवी-24015/5/2013-एएआई]

सैयद इमरान अहमद, अवर सचिव

MINISTRY OF CIVIL AVIATION

(AAI Section)

New Delhi, the 24th March, 2014

S.O. 1610.—In exercise of the powers conferred under Section 3 of the Airports Authority of India Act, 1994

(No. 55 of 1994), the Central Government hereby appoints Ms. M. Sathiyavathy, Additional Secretary and Financial Adviser in the Ministry of Civil Aviation, as part-time Member on the Board of Airports Authority of India vice Shri S. Machendranathan, former SS&FA, Ministry of Civil Aviation, with immediante effect.

[F. No. AV. 24015/5/2013-AAI]

SYED IMRAN AHMED, Under Secy.

उपभोक्ता मामले, खद्य और सार्वजनिक वितरण मंत्रालय
(उपभोक्ता मामले विभाग)
(भारतीय मानक ब्यूरो)

नई दिल्ली, 27 मई, 2014

का.आ. 1611.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गये हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	स्थापित तिथि	भारतीय मानक (कों) जोकि रद्द होने है, अगर है, की संख्या वर्ष और शीर्षक	रद्द होने की तिथि
(1)	(2)	(3)	(4)	(5)
1.	आई एस 2112 : 2014 चांदी एवं चांदी मिश्रधातुएं आभूषण/शिल्पकारी-शुद्धता एवं मुहरांकन - विशिष्ट (तीसरा पुनरीक्षण)	30 अप्रैल, 2014	आई एस 2112 : 2003	30 जुलाई, 2014

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली 110002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भूवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को http://www.standardsbis.in द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ: PUB/STD/2:3]

कला एम. वारियर, निदेशक (विदेशी भाषा एवं प्रकाशन)

MINISTRY OF CONSUMER AFFIRS, FOOD AND PUBLIC DISTRIBUTION
(Department of Consumer Affairs)
(BUREAU OF INDIAN STANDARDS)

New Delhi, the 27th May, 2014

S.O. 1611.—In pursuance of Clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the second column of Schedule hereto annexed has been established on the date indicated against it in third column. The particulars of the standards, if any, which are given in the fourth column shall also remain in force concurrently till they are concelled on the date indicated against them in the fifth column.

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	Date of Establishment	No. & Year of the Indian Standards to be cancelled, if any	Date of cancellation
(1)	(2)	(3)	(4)	(5)
1.	IS 2112 : 2014 Silver and Silver alloys, Jewellery/Artefacts-Fineness and Marking- Specification (Third Revision)	30 April, 2014	IS 2112 : 2003	30 July, 2014

Copies of these standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : Kolkatta, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Kochi.

[Ref : PUB/STD/2 :3]

KALA M. VARIAR, Director (Foreign Languages & Publications)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 22 मई, 2014

का.आ. 1612.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 96/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22/05/2014 को प्राप्त हुआ था।

[सं. एल-20012/743/1997-आईआर (सी-I)]

बी. एम. पटनायक, डैस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 22nd May, 2014

S.O. 1612.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 96/1998) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. CCL and their workmen, received by the Central Government on 22/05/2014.

[No. L-20012/743/1997-IR (C-I)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/s 10(1)(d) (2A) of I.D. Act, 1947

Reference No. 96 of 1998

Employer in relation to the management of Kargali Colliery of M/s. CCL

AND

Their workman

Present : SRI R. K.SARAN, Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Advocate

For the Workman : Sri B.B. Pandey, Advocate

State : Jharkhand Industry : Coal.

Dated : 25-4-2014

AWARD

By order No. L-20012/743/1997-IR(C-I), dated 09/11/1998 the Central Govt. in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

"Kya Coalfield Mazdoor Union ki mang ki karmkar Sri Mohammad Mayjuddin ko unke kanisth karmkaro ke sath pdonnati tatha waristhta di jay nayasangat hai?" yadi haa to karmakar kis tithi se kis rahat ka patra hai?"

2. The case is received from the Ministry of Labour on 23.11.1998. After receipt of reference, both parties are noticed. The Sponsoring Union files their written statement on 17.09.1999. And the management files their written statement -cum-rejoinder on 08.09.2000. The claim of the workman is that he was working as general mazdoor category I and he is to be promoted to category II which has been ignored.

3. It is agreed by the management that before the ALC that they will give chance to the workman to avail the DPC. It is not known said chance has been given or not. In the meantime 18 years has been elapsed.

4. Considering the facts and circumstances of this case, It is ordered to enroll the name of the present workman at bottom of the workman of category II. The award be implemented soon after publication of the award in the gazette.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 मई, 2014

का.आ. 1613.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 31/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22/05/2014 को प्राप्त हुआ था।

[सं. एल-20012/226/2002-आईआर (सी-I)]

बी. एम. पटनायक, डैस्क अधिकारी

New Delhi, the 22nd May, 2014

S.O. 1613.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 22/05/2014.

[No. L-20012/226/2002-IR (C-I)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947

REFERENCE No. 31 OF 2003

Parties :

The Vice President,
Janta Mazdoor Sangh,
Vihar Building, Jharia (Dhanbad)

Vs.

Gen. Manager,
Sijua Area -V of
M/s. BCCL, Dhanbad

APPEARANCES:

On behalf of the workman/Union : Mr. K. N. Singh, Ld. Advocate

On behalf of the Management : Mr. D. K. Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 26th March, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10 (1) (d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/226/2002-IR.(C-I) dt.10.03.2003.

SCHEDULE

"Whether the action of the management of Mudidih Colliery of M/s. BCCL, in dismissing Smt. Jaimala Devi, Shale Picker from service vide order No. 90 dt. 7/8.1.2000 is proper and justified? If not to what benefits is the concerned workman entitled?"

On receipt of the Order No. L-20012/226/2002-IR (C-I) dt.10.03.2003 of the above mentioned reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, the Reference Case No. 31 of 2003 was registered on 10th April, 2003 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The workman and the O.P./Management through their Lawyers appeared in, and contested the case.

2. The case of workwoman Jaimala Devi as sponsored by the Janta Mazdoor Sangh is that she was a permanent employee of Mudidih Colliey of M/s BCCL. She was served with the charge sheet on 25/26.5.1999 for the allegation of her fraudulently getting employment as second wife of ex-employee. She was subsequently dismissed from service w.e.f. 08.0l.2000.She submitted her reply, denying the allegation but without considering it, she was immediately suspended and the domestic enquiry in that regard was conducted. The charge of misconduct in lack of its ingredient was legally unmaintainable, as after her sufficient long and satisfactory service. The Management raised the issue about herself fake, and stopped her from duty followed by the chargesheet.The charge sheet No.2511/99 dt.25/26.9.1999 was vague, as it unrevealed any nature of the misconduct even prescisely. Even her dismissal letter without any factual basis was perverse and prejudicial finding of the Enquiry Officer. She was appointed under clause 9:4:2 of NCWA for the service in the year 1993 after due verification and identification, as her husband Rameshwar Dusadh, a permanent switchman of the colliery, had expired in harness on 15.2.1987 and she had been working as Shale Picker at Mudidih Colliery. She had fully satisfied the management about her identity duly certified by the Competent Authority. Since her marriage was solemnized as per the Hindu rites and custom prevalent in the Society. She is legal wife of the ex-employee evident from her nomination recorded in the service of the ex-employee as also from the certificate issued by the Pramukh Panchayat Samittee,Karpi,and verification of her genuiness by the Superintendent of Police, Jahanabad (Bihar). The status of the ex-employee having two marriages: one with Kauleshwari Devi and second with the concerned workwoman was well known to the knowledge of the Management prior to taking her into employment As the first wife was leper and incapable to serve the management, it was agreed that she would get the amount of Gratuity and others of the ex-employee, and his service would be given to the second wife (workwoman);as such the workwoman was offered the employment on approval of the Competent Authority of the Company. The Industrial Dispute firstly raised for resumption of duty and payment of wages on 21.12.2000, was converted into the dispute against her dismissal before the A.L.C.(C),Dhanbad. But failure in its conciliation resulted in the reference for an adjudication. Thus the action of the Management in dismissing the workwoman as per their letter No.90 dt.7.8.2000 is not justifiable.

3. The sponsoring Union in its rejoinder specifically denied the allegations of the O.P./Management, and stated the workwoman had got the employment with clean hand being a wife and nominee of the ex- employee. The enquiry was unfairly conducted and was not based on evidence. The Management had miserably failed to prove the charge against her by wrongly shifting the onus of proof on her.

4. Whereas the contra case of the O.P./Management with categorical denials is that the Industrial Dispute is unmaintainable in Law and facts, and highly belated. The workwoman entered into employment in BCCL at Mudidih Colliery fraudulently as shale picker in place of Late Rameshwar Dusadh Ex. S.B. Attendant of the Colliery under clause 9.4.2. of NCWA-V, by presenting herself as his legally married second wife. The act of her was misconduct under the Certified Standing Order of the Company. She was issued the charge sheet dt.25/26.6.1997 by the Management for her misconduct. She replied to it but her reply was found unsatisfactory. Sri A.N.P. Ambasta, Personnel Manager of the Colliery appointed as the Enquiry Officer by the Management fairly conducted the domestic enquiry according to the principle of natural justice, and submitted his enquiry report, holding her guilty of the charges levelled against her. The Disciplinary Authority after considering the enquiry report decided to dismiss her. She had fully participated along with her Defence Representative in the domestic enquiry. So the dismissal of the workwoman is legal and justified. She is not entitled to any relief. The O.P./Management sought permission to adduce evidence afresh to prove the charge, if the domestic enquiry found unfair at the preliminary hearing.

Denying categorically the allegations of the workwoman, the O.P./Management has pleaded in rejoinder that no workman is permitted to hold his second marriage during the life time of his first wife.

FINDING WITH REASONS

5. In the instant case, at the preliminary point, the Tribunal as per Order No. 39 dt. 27.6.2013 held the domestic enquiry fair, proper and in accordance with the principle of natural justice. Hence it directly came up for hearing argument on merits.

Mr. K. N. Singh, the Union Representative cum Advocate for the workwoman has to submit that admittedly Ex-workman Rameshwar Dusadh had two wives: firstly Kameshwari Devi who was a patient of leprosy, so his second wife Smt. Jaimala Devi was provided the employment on compassionate ground, and whose name was recorded as his nominee in the service record of the Ex-workman during his life time. It is also urged on her behalf that at the time of the employment of the workwoman, the first wife of the Ex-workman had also given her own undertaking for it, and after full and authentic verification, the workwoman was given employment on 16.6.1993, but after lapse of 6 (six) years, the action of the management for her dismissal from service on the allegation of getting employment fraudulently, which though arises not, is not at all justified. In response to it, the contention of Mr.D.K.Verma, the Learned Advocate for the O.P./Management is that as the charges of misconducts levelled against the workwoman have been crystally clearly proved, the punishment of her dismissal for her fraudulent employment was quite just and proper.

6. After hearing the Learned Counsels for the respective parties, I have gone through the materials available on the case record, I find the indisputable facts that workwoman Jaimala Devi has all along been claiming to have got her employment as a Shale Picker in Cat. I under the relevant clause of the NCWA in place of her husband Late Ramehswar Dusadh, Ex-workman of Mudidih Colliery. It is also an acknowledged fact that she was married to him during the life time of Kauleshri Devi, the first wife of the aforesaid Ex-workman. The Hindu Marriage Act 1955 under Sec.5 prohibits the second marriage which is null and void under its Sec.ll Under these circumstances it stands prima facie fraudulently getting the employment of the workwoman Jaimala Devi which was a grave misconduct on her part under clause 26.1.12 of the Certified Standing Order of the BCCL. So the punishment of her dismissal for such grave misconduct was quite appropriate in view of the nature of it. The workwoman does not deserve any grace of relief under Sec. 11 A of the Industrial Dispute Act, 1947.

In result, it is, in the terms of the reference, hereby responded and accordingly.

ORDERED

That the action of the Management of Mudidih Colliery of the M/s BCCL in dismissing Smt. Jaimala Devi,Shale Picker from her service as per Order No.90 dt. 7/8.1.2000 is quite proper and justified. The workman (workwoman) is not entitled to any benefits.

KISHORI RAM, Presiding Officer

नई दिल्ली, 22 मई, 2014

का.आ. 1614.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एअर इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 2/86 of 2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22/05/2014 को प्राप्त हुआ था।

[सं. एल-11012/14/2005-आईआर (सी-I)]

बी. एम. पटनायक, डैस्क अधिकारी

New Delhi, the 22nd May, 2014

S.O. 1614.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/86 of 2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of M/s. Air India and their workmen, received by the Central Government on 22/05/2014.

[No. L-11012/14/2005-IR (C-I)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K. B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/86 of 2005

Employers in relation to the management of Air India Ltd.

The Chairman-cum-Managing Director
Air India Ltd.
Old Airport
Santacurz (E)
Mumbai-400 029

AND

THEIR WORKMEN

The President
Air India Employees Guild
Old Airport
Santacruz (E)
Mumbai-400 029.

APPEARANCES :

FOR THE EMPLOYER : Ms. Geeta Raju, Advocate i/b. M/s. M.V. Kini & Co.

FOR THE WORKMAN : Mr. P. B. Kakade, Advocate

Mumbai, dated the 10th February, 2014

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-11012/14/2005-IR (C-I), dated 02.06.2005 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the demand of the Air India Employees Guild from the management of Air India that Sh. S. U. Chandan Shive be appointed as Trainee Technician with all consequential benefits w.e.f 1984 justified? If so, to what relief is the workman entitled?"

2. After receipt of the reference, notices were issued to both the parties. Both the parties appeared before the Tribunal. However the second party union did not file the statement of claim. Therefore the reference was dismissed for want of prosecution. Thereafter the workman has filed Miscellaneous Application. The said application was allowed and the reference was restored. The workman has filed his statement of claim at Ex-19. According to him he was employee of the first party. Before that he was serving in Indian Army. Before retirement he successfully did the diploma course of Vocational Trades from Ordinance Factory, Kanpur for the trade of Fitter. He has also completed the course of Army Educational Corps. While he was serving with first party he had applied for promotion. However he was victimised by the management and they did not promote him to the post of Trainee Technician. Therefore he prays for declaration that he is entitled for promotional benefits of the said post w.e.f. 1984 and claims arrears of full back-wages w.e.f. 1984.

3. The first party resisted the statement of claim vide its written statement Ex-23. According to them there is in ordinate delay in raising the dispute. They further contended that the workman retired on 31/05/2009 on reaching the age of superannuation and since then he is not in the employment of the first party. Therefore reference is not tenable. They further contended that, though the dispute was raised by the union, the union did not pursue the reference. Therefore it was dismissed for want of prosecution. The workman has applied for restoration and after restoration he himself has filed the statement of claim. Neither union pursued the matter nor filed statement of claim. It is the dispute in respect of promotion and the same cannot be raised by individual workman. For all these reasons according to the first party the reference is not maintainable.

4. They further contended that the workman could not be promoted to the post of Trainee Technician or as a Bench Fitter as he was not qualified for the said post. The requisite qualification for appointment to the post of Trainee Technician in the year 1984 was SSC or its equivalent with minimum three years' experience as a cleaner in Engineering Department. The workman was not qualified for the post in the year 1984. Again in the years 1989 and 1999 and 2000 and 2002 there were employment notices. However the workman was not qualified for the post. Therefore he was not promoted. His claim that he was victimised is not sustainable. Therefore they pray that the reference be rejected.

5. Following are the issues for my determination. I record my findings thereon for the reasons to follow.

Sr. No.	Issues	Findings
1.	Whether the employee Shri S.U.Chandanshive was eligible and deserves to be Promoted to the post of Trainee Technician w.e.f. 1984?	No.
2.	Whether he was superseded high handedly and illegally?	No.
3.	Whether the workman is entitled to monetary benefit since 1984 as claimed for?	No.
4.	What order?	As per order below.

REASONS

Issues Nos. 1 to 3

6. All these issues are interlinked. Therefore in order to avoid repetition of discussion they are discussed and decided simultaneously. In the case at hand the fact is not disputed that the workman was an Ex-serviceman and has undergone vocational training at Ordinance Factory, Kanpur. The fact is also not disputed that after retirement he joined the services with the first party since 1984. According to the workman he was victimised and not given promotion though he was entitled to get the same. He has not given any circumstance as to why he was victimised. On the other hand the workman is claiming promotion since 1984 and dispute for the same was raised in the year 2005. No explanation is offered for such a long delay in raising the dispute. There is also no reason offered by the workman as to why and who victimised him. That apart he has not even contended by leading evidence to show that he was eligible to the post of Trainee Technician and inspite of that he was not promoted.

7. In this respect after perusing the staff notices Ex-31 to 35 for selection to the post of Trainee Technicians, it is revealed from Ex- 31 that, the qualification for the post of Trainee Technician is mentioned as SSC or its equivalent with a minimum of three years' experience as a Cleaner in the Engineering Department as on 01/02/1984. In this respect the workman himself has admitted in his cross at Ex-27 that he has passed 9th Std. and has also passed Diploma of Fitter Trade. In the year 1984 when staff notice dated 20/02/1984 was issued for the post of Trainee Technician, neither workman had passed SSC nor he had three years' experience in the Engineering Deptt. as he has joined in 1983.

8. In respect of the second staff notice (Ex-32) dated 24/10/1989 for selection of Trainee Technician, the educational qualification is given SSC or its equivalent examination and a specific note was given thereunder that non SSC or non-matric will not be considered for the selection and they should not apply.

9. The third employment notice was given on 15/12/1999 (Ex-33), fourth notice (Ex-34) was given on 26/8/2000 and fifth notice (Ex-35) was given on 2/5/2002. As per the third notice (Ex-33), the minimum educational qualification was candidate must be diploma holder for Trainee Technician and Higher Secondary or equivalent and diploma in Electronics and Radio Engineering. For Trainee Technician (Bench Fitter) the minimum qualification was prescribed SSC and ITI/NCTVT in the trade of Bench Fitter from Industrial Training Institute with five years full time experience.

10. As per the fourth notice (Ex-34), the minimum educational qualification was the candidate must be diploma holder in Mechanical/Electrical/Electronics/ Instrumentation/Production Engineering awarded by the Director of Technical Education of State Government and Higher Secondary or equivalent diploma in Aircraft Maintenance Engineering of three years duration and for Trainee Technician (ITI/NCTVT) Bench Fitter, the qualification is prescribed SSC and ITI/NCTVT Certificate in the trades of Bench Fitter/Turner/Miller/Machinist/ Welder from Industrial Training Institute.

11. As per the fifth notice (Ex-35) the requisite qualification for Bench Fitter was Training of Bench Fitter from Industrial Training Institute or Apprenticeship in any organisation under Apprenticeship Act 1957 with NCTVT Certificate and five years full time experience including Training. The workman herein has obtained NCTVT Certificate at Ex-38. However he has not completed training of Fitters from Industrial Training Institute. Therefore as per notice Ex-35 he was not qualified for the post of Bench Fitter. The workman has also not passed the SSC examination which was the requisite qualification for the post of Trainee Technician as mentioned in the notices Ex-32 to 34. Admittedly he is educated only upto 9th Std. Therefore the workman was not qualified for the said post. Therefore he was not promoted and the management need not be blamed for the same. Furthermore there is no reason to victimise the workman.

12. In the circumstances I come to the conclusion that, the workman was neither eligible nor deserve to be appointed as Trainee Technician. Consequently I also hold that he was not superseded high handedly and illegally. Therefore he is not entitled to the monetary benefit since 1984 as claimed for. Accordingly I decide these issues nos. 1 to 3 in the negative and proceed to pass the following order:

ORDER

The reference stands rejected.

Date : 10/02/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 22 मई, 2014

का.आ. 1615.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 61/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22/05/2014 को प्राप्त हुआ था।

[सं. एल-20012/291/1993-आईआर (सी-I)]

बी. एम. पटनायक, डैस्क अधिकारी

New Delhi, the 22nd May, 2014

S.O. 1615.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 61/1994) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. CCL and their workmen, received by the Central Government on 22/05/2014.

[No. L-20012/291/1993-IR (C-I)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D. ACT, 1947.

Ref. No. 61 of 1994

Parties : Employers in relation to the management of Ara Colliery, M/s. CCL

AND

Their workmen

Present : SRI RANJAN KUMAR SARAN, Presiding officer

Appearances:

For the Employers : None

For the workman : None

State : Jharkhand Industry : Coal

Dated : 21/3/2014

AWARD

By Order No. L-20012/291/93 -IR (C-I), dated 24/03/1994, the Central Government in the Ministry of labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub -section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the management of Ara Colliery of M/s. C. C. Ltd., terminating the service of Shri Chawra Ram, piece rated worker, S/o Late Karia is justified? If not, to what relief is the workman entitled?"

2. After receipt of the reference, both parties are noticed, they submitted their claim statement, rejoinder and document. The parties appearing for certain dates and thereafter none appears from either side. Therefore it felt that there is no dispute between the parties. Hence "No Dispute" award is passed, communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 मई, 2014

का.आ. 1616.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सहारा एअरलाईनस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 205/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22/05/2014 को प्राप्त हुआ था।

[सं. एल-11012/24/2004-आईआर (सी-I)]

बी. एम. पटनायक, डैस्क अधिकारी

New Delhi, the 22nd May, 2014

S.O. 1616.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 205/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. Sahara Airlines Ltd., and their workmen, received by the Central Government on 22/05/2014.

[No. L-11012/24/2004-IR (C-I)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 205/2011

Shri Bhupender Kumar through
Private Transport Workers Union,
A-1, 435, Madhu Vihar,
New Delhi. .....Workman

Versus

M/s. Sahara Airlines,
3rd Floor, Dr. Gopal Dass Bhawan,
28, Barakhamba Road,
New Delhi-11 0001. ....Management

AWARD

M/s. Sahara Airlmes (in short the Airlines) appointed a driver on 10.02.2001. He was to be on probation/training for a period of 12 months from the date of his joining. During period of probation, the driver remained unauthorizedly absent with effect from 03.08.2001. Since he failed to resume duties for more than four months, his name was struck off the roll in December 2011. Aggrieved by the said, the driver raised a demand on the Airlines for reinstatement of his services. When the Airlines did not respond to his demand, he raised an industrial dispute before the Conciliation Officer. Since the dispute was

contested by the Airlines conciliation proceedings failed. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute for adjudication to the Central Government Industrial Tribunal No. 2, New Delhi, vide order No. L-11012/24/2004-IR(C-I), New Delhi dated 26.04.2005, with following terms of reference:

''क्या प्राइवेट ट्रांसपोर्ट वर्कर्स यूनियन की सहारा एअरलाइंस लिमिटेड के प्रबन्धतंत्र से मांग कि कर्मकार श्री भूपेन्द्र कुमार को दिनांक 18-10-2001 से सेवा में पूर्ण वेतन सहित पुर:स्थापित किया जाए उचित एवं न्यायसंगत हैं? यदि हां तो कर्मकार किस राहत के पात्र हैं?''

2. Claim statement was filed by the driver, namely, Shri Bhupender Singh, pleading that he was employed as a driver by the Airlines on 01-01-2001. He worked to entire satisfaction of his supervisors and never gave a chance of complaint. However, his services were abruptly terminated on 18.10.2001 illegally, arbitrarily and without following due process of law. No charge sheet was served on him. His earned wages for the period 01.09.2001 to 17.10.2001 were also not paid. He regularly approached the Airlines, seeking reinstatement in service, but his request felt on deaf ears of the authorities. He raised a notice of demand on 04.08.2003 claiming reinstatement in services as well as for payment of his earned wages for the period from 01.09.2001 to 17.10.2001. The Airlines opted to keep mum. He is unemployed from the date of his termination. Action of the Airlines was violative of the provisions of Section 25F and 25H of the Industrial Disputes Act 1947. He seeks reinstatement in services of the Airlines with all consequential benefits.

3. Claim was demurred by the Airlines pleading that the claim is baseless, hopelessly stale, misconceived and devoid of justification. The claimant was appointed as a driver vice appointment letter datd 01.01.2001, on probation/training for a period of 12 month from the date of his joining at a consolidated salary of Rs. 2860.00. The claimant joined services with the Airlines on 10.02.2001. On 03.08.2001, the claimant proceeded on leave without any prior intimation or sanction of leave from the competent authority and did not resume his duties thereafter. After waiting for four months his name struck off the rolls in December 2001, i.e. during the period of probation. The claimant had not put in 240 days continuous servcie. Law is well settled that dispensing of servcies of a workman during period of probation does not amount to retrenchment. During the short span of probation, servcies of the claimant was far from satisfactory. He is not entitled to any wages for the period from 01.09.2001 to 17.10.2001. He is not entitled to any relief, muchless the relief of reinstatement in service. His claim may be discarded, being devoid of merits, pleads the Airlines.

4. Vide order No. Z-22019/6/2007-IR (C-II) New Delhi dated 30.03.2010, the case was transferred to this Tribunal for adjudication by the appropriate Government.

5. In order to establish his claim, the claimant enteres the witness box to testify facts. Shri Bharat Bhushan entered the witness box to depose facts on behalf of the Airlines. During course of his cross examination, parties submitted that there was chance of settlement. In view of these facts the Tribunal associated itself in process of settlement. Ultimately an amicable settlement was arrived at between the parties, contents of which are detailed in subsequent sections.

6. Claimant made a statement on oath that he is ready to settle his grievances with the Airlines in case a sum of Rs. 85,000.00 is paid to him towards full and final settlement of his claim relating to reinstatement in service, notice pay, retrenchment compensation, payment of wages, payment of leave encashment and other statutory benefits. He announced that on payment of Rs. 85000.00 to him, his claim would stand satisfied. Shri Anil Bhat, authorised representative of the Airlines, unfolded that the Airlines is ready to pay a sum of Rs. 85000.00 to the claimant towards full and final settlement of his claim, made in the present dispute.

7. Out of facts detailed by the parties it crystallized that on payment of Rs.85000 the claimant will feel satisfied and his grievances relating to reinstatement in service, notice pay, retrenchment compensation, wages, payment of leave encashment and other statutory benefits would come to an end. The Airlines had agreed to pay a sum of Rs.85,000.00 to the claimant, within 20 days, towards full and final settlement of claim of the claimant which undertaking would be complied with. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 01.04.2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 26 मई, 2014

का.आ. 1617.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफ. सी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 140/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/5/2014 को प्राप्त हुआ था।

[सं. एल-22011/13/2013-आईआर (सीएम-II)]

बी. एम. पटनायक, डैस्क अधिकारी

New Delhi, the 26th May, 2014

S.O. 1617.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 140/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the

industrial dispute between the management of Food Corporation of India, District Office, and their workmen, received by the Central Government on 26/05/2014.

[No. L-22011/13/2013-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID 140 of 2013,

Reference No. L-22011/13/2013-IR(CM-II) dated 24.12.2013

The General Secretary,
FCI Handling Workers Union,
8651, Arakashan Road, Pahar Ganj,
New Delhi-110055 ...Union

Versus

1. The Area Manager,
Food Corporation of India,
District Office, Faridabad,
NH-2, NIT, Faridabad (Haryana) Faridabad
2. The General Secretary,
Food Corporation of India
Handling Workers' Union,
8651, Arakashan Road,
Pahar Ganj, New Delhi-110055
3. The General Manager (Regional),
FCI Regional Office, Haryana,
SCO-29-32, Sector-4,
Panchkula (Haryana) ...Respondents

Appearances :

For the Workman : None

For the Management : None

AWARD

Passed On : 8.5.2014

Government of India Ministry of Labour vide notification No. L-22011/13/2013-IR(CM-II) dated 24.12.2013 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

"Whether the action of the management of Food Corporation of India in preparing the list of 135 workers (list attached) of the FCI, FSD Palwal over the issue of induction of 33 Workers (24 Handling and 9 Ancillary Workers) without considering the objection of the Union with the supporting documents along with enlisted workmen (list attached) is just, proper and illegal? To what relief the concerned workman is entitled to and from which date?"

2. On receipt of the reference, notices were issued to both the parties. But none appeared. Again notice through registered post has been issued for today but none appeared today for the parties. No claim statement has been filed. It appears that parties are not interested in pursuing the present reference.

3. In view of the above, the present reference is returned to the Central Govt. for want of prosecution as such. Central Govt. be informed. Soft as well as hard copy be sent to the Central Govt. for publication.

Chandigarh
8.5.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 26 मई, 2014

का.आ. 1618.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 96/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/5/2014 को प्राप्त हुआ था।

[सं. एल-22012/25/2005-आईआर (सीएम-II)]

बी. एम. पटनायक, डैस्क अधिकारी

New Delhi, the 26th May, 2014

S.O. 1618.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 96/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Rawanwara Khas Colliery of WCL, and their workmen, received by the Central Government on 26/05/2014.

[No. L-22012/25/2005-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/96/2005 Date : 25.04.2014

Party No. 1 : The Manager,
Rawanwara Khas Colliery of WCL,
Pench Area, Post : Dihavani,
Chhindwara (MP).

Versus

Party No. 2 : Shri Bhagatsingh Sakravar,
General Secretary,
SKMS (AITUC), CRO Camp,
Iklehara, Chhindwara (MP).

AWARD

(Dated : 25th April, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Satyanarayan S/o Rajdhari, for adjudication, as per letter No.L-22012/25/ 2005-IR (CM-II) dated 29.11.2005, with the following schedule:-

> "Whether the action of the management of Rawanwara Khas Colliery of WCL, Pench area Post Dihavani, Distt. Chhindwara in terminating the services of Shri Satyanarayan, S/o Rajdhari, Ex-Tub Loader w.e.f. 26.05.2001 is legal and justified? If not, to what relief is the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Satyanarayan S/o Rajdhari, ("the workman" in short) through his union, "SKMS (AITUC)", ("the union" in short) filed the statement of claim and the management of WCL, ("party no.1" in short) filed the written statement.

The case of the workman as presented by the union in the statement of claim is that the workman was working as a tub loader for many years in Parasia Colliery of Pench area and previously, he was working in the underground of Shivpuri Colliery, but as he remained ill, he was transferred to Ravanwara Khas Colliery and party no.1 issued the charge sheet dated 20.09.2000 against the workman and the workman submitted his reply to the charge sheet on 21.09.2000, stating therein of his remaining absent after taking leave and the workman attended the departmental enquiry alongwith his co-worker and informed the enquiry officer about the reasons of his remaining absent and on 13.09.2000, the workman had submitted an application alongwith the documents regarding his illness and treatment to the management and had prayed for allowing him to resume duties and before the enquiry officer and management representative, the workman adduced his evidence in his defence and he was also cross-examined and as the workman received information to go to his village, he applied for adjournment of the departmental enquiry and went to his village and he could not able to attend the departmental enquiry on the next date and in the enquiry report, though it was mentioned that the next date of the enquiry would be intimated to the workman in his village address, actually neither any intimation was sent to him nor the enquiry officer waited for his return, which clearly indicates that management was predetermined to terminate the services of the workman and management was successful in its intention and completed the departmental enquiry without observing the principles of natural justice and even though, the departmental enquiry was in progress and the enquiry officer himself had told to intimate the next date of the enquiry to the workman, actually without giving the workman any intimation, the enquiry was closed and as the enquiry conducted by the party no.1 is quite illegal and without any basis and against the standing order, the same is liable to be set aside and quashed and the workman is entitled for reinstatement in service with continuity and full back wages.

The union has prayed to direct the party no.1 to reinstate the workman in service with continuity and full back wages.

3. The party no.1 in the written statement has pleaded inter alia that as the workman is not a member of the S.K.M.S. Union, the union has no locus standi to raise the dispute on behalf of the workman and the dispute is highly belated and not maintainable. It is further pleaded by the party no.1 that the workman was working as a tub loader at Rawanwara Khas Colliery and he was a habitual absentee and he used to remain absent from duty on various occasions, without any intimation/permission or sanctioned leave and he remained absent from duty from 15.11.1999 till the date of the submission of the charge sheet, without any intimation and as such, under the provision of the Standing Order applicable to the colliery, charge sheet dated 20.09.2000 was submitted against him and the workman submitted his reply to the charge sheet and his reply was found to be unsatisfactory, the disciplinary authority decided to conduct the departmental enquiry against the workman and accordingly, Shri P.M.Lokhande was appointed as the Enquiry Officer to conduct the enquiry and the Enquiry Officer fixed the enquiry to 09.10.2000 and as on 09.10.2000, the workman did not attended the enquiry, the enquiry was adjourned to 18.11.2000 by the Enquiry Officer, to provide an opportunity to the workman to participate in the enquiry and the workman attended the enquiry on 18.11.2000 and submitted an application to engage Shri Giridhari, the Mining Sirdar as his co-worker and the Enquiry Officer allowed the application and fixed the enquiry to 20.11.2000 and the workman attended the enquiry on 20.11.2000 and requested for adjournment, on the ground of absence of his co-worker, so the enquiry was adjourned to 21.11.2000 and though the workman attended the enquiry on 21.11.2000, he was not interested to participate in the enquiry and he informed the Enquiry Officer to have received a message to go to his village and for that he would not be able to participate in the enquiry and another date be given to him and on the request of the workman, the Enquiry Officer gave a last chance to the workman to attend the enquiry and adjourned the enquiry to 01.12.2000 at 04.30 P.M. and on 01.12.2000, though the Enquiry Officer, management representative and witnesses for the management were present, the workman did not turn up,

so, the management representative requested the Enquiry Officer to proceed with the enquiry ex-parte, but the Enquiry Officer with a view to give on more last chance to the workman, adjourned the enquiry to 02.01.2001 and as the workman did not attend the enquiry on 02.01.2001, the Enquiry Officer proceeded with the enquiry and the management representative produced the documents and oral evidence to prove the charges against the workman and then the Enquiry Officer closed the enquiry proceedings and submitted his report to the Disciplinary Authority, holding the workman guilty of the charges and the Disciplinary Authority after going through the documents relating to the departmental enquiry agreed with the findings of the Enquiry Officer and issued the show cause notice to the workman, but the workman did not submit any reply to the show cause notice, so, the Disciplinary Authority after taking into consideration about the past records of the workman, passed the order of termination of the workman from services w.e.f. 26.05.2001 and the order was sent to the workman in his local home address as well as permanent address vide letter no.708/2001 dated 26.05.2001 under registered post, which was received by the workman and the departmental enquiry was conducted legally, properly and by following the principles of justice and the order of termination of the workman from services is not only correct, but also, proper, legal and justified and the workman is not entitled to any relief.

4. In the rejoinder, it is pleaded by the union that the facts mentioned in paragraph two of the written statement that the union is not entitled to raise the dispute is not true, as there is no such provision in the Act and it is also false to claim that the issue is highly belated, when the reference has been made by the Government for adjudication and the workman was not a habitual absentee and he fell ill on15.11.1999, for which, he had submitted application alongwith document in support of his illness and he had taken leave for the same and the allegations made against the workman were quite false and the charge sheet submitted against the workman was not in accordance with the provisions of the Standing Order and the entire enquiry and the punishment imposed against the workman are illegal and unconstitutional and are liable to be set aside.

5. As this is a case of termination of the services of the workman, after holding of a departmental enquiry against him, the fairness or otherwise of the departmental enquiry was taken up as a preliminary issue for consideration and by order dated 28.11.2013, the enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

6. At the time of argument, it was submitted by the Union Representative that the charge sheet against the workman was submitted under clauses 18.1 and 26.24 of the Standing Order and there are no such clauses in the Standing Order, which is in force at present and the entire departmental enquiry conducted against the workman is illegal and the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

It is necessary to mention here that no argument was made on behalf of the Party No.1.

7. The argument advanced by the Union representative is almost regarding the fairness of the enquiry. At the cost of repetition, it is necessary to be mentioned here that by order dated 28.11.2013, the departmental enquiry conducted against the workman has already been held to be valid and in accordance with the principles of natural justice. Hence, there is no scope to consider again the submission made by the Union representative regarding the fairness of the enquiry. So far the contention regarding submission of the charge sheet under clauses 18.1 and 26.24 is concerned, on perusal of the charge sheet, it is found that the submission made by the Union representative in that regard is not at all true and the same has no force, as the charge sheet was not submitted under clause 18.1, but the same was submitted against the workman only under clause 26.24 of the Standing Order, which was and is in force and which deals with, " Habitual late attendance or habitual absence" from duty without sufficient cause.

8. Before delving into the merit of the matter, I think it necessary to mention the principles envisaged by the Hon'ble Apex Court in different judgments in regard to the jurisdiction and power of the Tribunal to interfere with the findings in a departmental enquiry and punishment imposed against the delinquent workman.

> "It is well settled that departmental enquiry is not based by strict rules of Evidence Act, but by fair play and natural justice and only total absence, but not sufficiency of evidence before Tribunal is ground for interference by court. It is also well settled that interference with the finding of fact in a departmental enquiry is permissible, only when there is no material for the said conclusion or that on the materials, the conclusion cannot be that of a reasonable man.

A finding recorded in a domestic enquiry cannot be characterized as perverse by the Labour Court, unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of evidence adduced. In a domestic enquiry, once a conclusion is deducted from the evidence, it is not permissible to assail the conclusion even though, it is possible for some other authority to arrive at a different conclusion on the same evidence.

The jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere

with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of Legislature or rules made under the proviso of Article 309 or the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

So, keeping in view the principles as mentioned above, now, the present case in hand is to be considered.

9. On perusal of the materials on record, it is found that this is not a case of no evidence or that on the materials, the conclusion drawn by the enquiry officer cannot be that of a reasonable man. The findings given by the enquiry officer are based on the materials available on the record of the departmental enquiry. The enquiry officer has analyzed the evidence in a rational manner and has assigned cogent reasons in support of his findings. Hence, the findings of the enquiry officer cannot be said to be perverse.

10. So far the proportionality of the punishment is concerned, serious misconduct of habitual absenteeism has been proved against the workman in a properly conducted departmental enquiry. Hence, the punishment of dismissal from services imposed against the workman cannot be said to be disproportionate. In view of the discussions made above, it is found that there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:

ORDER

The action of the management of Rawanwara Khas Colliery of WCL, Pench area post Dihavani Distt. Chindwara in terminating the services of Shri Satyanarayan S/o Rajdhari, Ex-Tub Loader w.e.f. 26.05.2001 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 26 मई, 2014

का.आ. 1619.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखानी के पंचाट (संदर्भ संख्या 29/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/5/2014 को प्राप्त हुआ था।

[सं. एल-22013/1/2014-आईआर (सी-II)]

बी. एम. पटनायक, डैस्क अधिकारी

New Delhi, the 26th May, 2014

S.O. 1619.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID/29/2008) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 26.05.2014.

[No. L-22013/1/2014-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DISTRICT & SESSIONS COURT : AT : GODAVARIKHANI.

Present : Sri G.V. Krishnaiah,
Chairman-cum-Presiding Officer,
Godavarikhani.

Wednesday, 12th day of March, 2014

INDUSTRIAL DISPUTE NO. 29 OF 2008

Between :-

Mohammad Amzad Khan,
S/o Ahmad Khan, Ex. Badli Filler,
E.C. No. 2117950, Goleti No. I Incline,
Bellampalli Area, SCCL,
Aged about 21 years,
R/o. C/o. MD. Shakeel,
Qr. No. ND-2846, Nagarjuna Colony,
Naspur, Mancherial Mandal,
Adilabad District. .....Petitioner

AND

1. The Superintendent of Mines,
Goleti No.1 Incline,
Singareni Collieries Company Limited,
Bellampalli Area, Bellampalli,
Adilabad District.

2. The General Manager,
Singareni Collieries Company Limited,
Bellampalli Area, Adilabad District.

3. The Chairman & Managing Director,
The Singareni Collieries Company Limited,
Post: Kothagudem,
District: Khammam. .....Respondents

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri V. Muralidhar Yadav Advocate, for the petitioner and of Sri D. Krishnamurthy, Advocate, for the respondents, and the matter having stood over before me for consideration till this date, the Court passed the following:—

AWARD

1. This petition is filed under Sec.2-A (2) of I.D. Act seeking reinstatement of the petitioner into service as Badli Filler. Petitioner was dismissed on the ground of habitual absence after conducting enquiry.

2. The details of the case are as follows:

3. Petitioner was appointed as Badli Filler on 19.06.2006. He could not attend to his duties regularly due to attack of jaundice and death of his mother in June, 2007. Petitioner suffered viral hepatitis from 19.09.2007 to 22.11.2007. He took treatment in Bhadrachalam Government Hospital for 65 days. He worked for only 72 musters in the year 2007. On 9.02.2008 petitioner was issued charge sheet for habitual absence. After enquiry he was dismissed from service. Enquiry was not conducted according to the principles of natural justice. Without issuing show cause notice petitioner was dismissed from service. Hence he may be reinstated.

4. Respondent filed counter stating that petitioner attended for only 31 days in the year 2006, 71 days in the year 2007 and 24 days upto April, 2008. Therefore he was served with charge sheet as per 25.25 of the standing orders for habitual absence from duty without sufficient cause. Petitioner submitted his explanation dated 19.02.2008 stating that his mother expired on 6.07.2007 and he suffered from jaundice subsequently. Petitioner was issued enquiry notice dated 18.02.2008 directing to attend enquiry on 20.08.2008. Petitioner fully participated in the enquiry. Enquiry report was given holding that the petitioner was habitually absent without sufficient cause. Management sent copy of enquiry report and called for his objections. Subsequently he was dismissed from service.

5. Respondents also contended that petitioner did not petitioner did not take treatment from the hospitals of the company and he did not inform the management about his sickness or apply for leave. Regarding issuing of show cause notice it is contended that there is no specific provision in the standing orders about issuing of show cause notice proposing the punishment to be imposed on the delinquent employee and therefore show cause notice is not necessary.

6. In the course of hearing petitioner filed memo under Sec.11-A of I.D. Act stating that he is not objecting to the procedure adopted in the domestic enquiry.

7. During the course of enquiry Ex.W-1 to W-10 and Ex.M-1 to M-8 have been marked.

8. Now the point for consideration is:

"Whether the petitioner can be reinstated into service?"

9. According to the counter, petitioner attended for duty for 31 days in the year 2006. Petitioner joined on 19.06.2006. Therefore out of nearly six months, he attended duty for 31 days. In the year 2007 he attended duty for 71 days. Petitioner says that he suffered from viral hepatitis for 65 days and took treatment in Government Hospital, Bhadrachalam. In the enquiry he did not file any such medical certificate. Further in the explanation given in the charge sheet there is no clear mention that petitioner had taken treatment in Government Hospital, Bhadrachalam. He says that he suffered road accident also and no material is put forth in the enquiry regarding the accident. It is an admitted fact that petitioner did not apply the leave or inform about his sickness to the management. Therefore the habitual absence from duties without sufficient cause is made out.

10. Now it remains to be seen whether the extreme penalty of dismissal of service is justified with the circumstances of the case.

11. Habitual absence from duties would have definitely caused inconvenience to the management but there is no misconduct involving moral turpitude on the part of the petitioner. Petitioner joined in service as Badli Filler at a very young age consequent to the death of his father while in service. In the early years of service he may not have been able to cope up with the hard work that is associated with work of the Badli Filler. Apart from the illness pleaded by the petitioner, he stated that his mother died in July, 2007. This explanation of the petitioner cannot be brushed aside so easily. Upto June, 2007 the petitioner was absent for 96 days, which means that he worked for half of the six months period.

12. Considering the fact that petitioner was a new entrant to the job and his mother died in the July, 2007, the extreme penalty of dismissal cannot be justified. In a decision reported in DIVISION BENCH JUDGMENT OF GUJARATH HIGH COURT REPORTED IN 1982 LAB.IC.1031 BETWEEN: R.M., PARMAR VRS., GUJARATH ELECTRICITY BOARD.

The following guide lines were laid down in the mater of inflicting punishment of discharge and dismissal:-

1. In a disciplinary proceeding for an alleged fault of an employee, punishment is imposed not in order to seek retribution or to give vent to feelings of wrath.

2. The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out of warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.

3. It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. It would be counter-productive to do so for it would be futile to expect to recruit employees

who are so perfect that they would never commit any fault.

4. In order not to attract the charge of arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.

5. When different categories of penalties can be imposed in respect of the alleged fault, one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalty available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned, it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardizing the interest of the employees the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask the inner voice and rational faculty why a lesser penalty cannot be imposed.

6. It cannot be over looked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the court and avail the costly time-consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.

7. When the disciplinary proceedings end in favour of the employee, the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because the extreme penalty of dismissal or removal is imposed instead of a lighter one.

8. Every harsh order of removal from service creates bitterness and arouses feeling of antagonism in the collective mind of the workers and gives raise to a feeling of class conflict. It does more harm than good to the employer as also to the society.

9. Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly, when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instances, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity (and even tax evasion or possession of black money is not considered to be dishonorable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passed under the name of kleptomania when committed by the rich.

13. In the result, the order of dismissal dt.24.04.2008 marked as Ext.M-8 is set aside and the respondents are directed to reinstate the petitioner into service as "Afresh Badli Filler" and he shall be subjected to medical test for post. The petitioner is not entitled to any back wages, continuity of service and any other attendant benefits.

Typed to my dictation, corrected and pronounced by me in the open Court on this the 12th day of March, 2014.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman	For Management
-Nil-	-Nil-

EXHIBITS

For workman :

Ex.W-1	Dt.	09-02-2008	Charge sheet.
Ex.W-2	Dt.	20-02-2008	Enquiry proceedings, x.copy
Ex.W-3	Dt.	25-02-2008	Enquiry report. x.copy
Ex.W-4	Dt.	29/31-03-2008	Show cause notice.
Ex.W-5	Dt.	24-05-2008	Dismissal letter, x.copy
Ex.W-6	Dt.	—	Postal receipt
Ex.W-7	Dt.	29-05-2008	Demand notice
Ex.W-8	Dt.	22-11-2007	Medical certificate
Ex.W-9	Dt.	31-07-2008	Death certificate
Ex.W-10	Dt.	—	Pay slip for the month of August, 2008

For Management:-

Ex.M-1	Dt.	09-02-2008	Charge sheet o/copy
Ex.M-2	Dt.	20-02-2008	Reply to charge sheet.
Ex.M-3	Dt.	18-02-2008	Enquiry notice
Ex.M-4	Dt.	20-02-2008	Enquiry proceedings
Ex.M-5	Dt.	25-02-2008	Enquiry report.
Ex.M-6	Dt.	29/31-03-2008	Show cause notice.
Ex.M-7	Dt.	16-04-2008	Ack., to show cause notice.
Ex.M-8	Dt.	24-04-2008	Dismissal order.

नई दिल्ली, 26 मई, 2014

का.आ. 1620.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफ. सी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 24/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/5/2014 को प्राप्त हुआ था।

[सं. एल-22011/62/2008-आईआर (सी-II)]

बी. एम. पटनायक, डैस्क अधिकारी

New Delhi, the 26th May, 2014

S.O. 1620.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 26/05/2014.

[No. L-22011/62/2008-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KARKARDOOMA, DELHI

Present : Shri Harbansh Kumar Saxena

ID No. 24/2009

General Secretary

Versus

Food Corporation of India

AWARD

The Central Government in the Ministry of Labour vide notification No. L-22011/62/2008- IR(C-II): dated 11.02.2009 referred the following Industrial Dispute to this tribunal for the adjudication:-

> "Whether the demand of the FCI Workers Union that the management of FCI, Jwalapur should implement the settlement dated 20.6.1998 entered with FCI Workers Union and also absorb all the 80 workmen with retrospective effect (as per list attached) under direct payment system in the services of Food Corporation of India and also allowing payment of wages to the workers directly by Food Corporation of India are justified? If yes, to what relief are the concerned workmen entitled and from which date?"

On 20.3.2009 reference was received in this tribunal. Which was register as I.D. No. 24/09 and claimants were called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workmen/claimants filed claim statement. Wherein he stated as follows:-

1. That the following reference was made by the Government of India, Ministry of Labour vide Order No. L-22011/62/2008-IR(C-II) dated 11.2.2009 :

> "Whether the demand of the FCI Workers Union that the management of FCI, Jwalapur should implement the settlement dated 20.6.1998 entered with FCI Workers Union and also absorb all the 80 workmen with retrospective effect (as per list attached) under direct payment system in the services of Food Corporation of India and also allowing payment of wages to the workers directly by Food Corporation of India are justified? If yes, to what relief are the concerned workmen entitled and from which date?"

2. That as there was an obvious typographical error in the above reference, this Union took up the matter with the Government of India, Ministry of Labour for correction of the terms of reference to avoid any possible objection that the reference is vague, not clear, defective etc.

3. That the Government of India, Ministry of Labour accepted the suggestion of this Union and issued a Corrigendum vide No.- 22011/62/2008-IR(C-II) dated 27.10.2009. The corrected reference , requiring adjudication by this Hon'ble Tribunal, is as under:

> "Whether the demand of the FCI Workers Union that the management of FCI, Jwalapur should implement the settlement dated 20.6.1998 entered with FCI Workers Union and also absorb all the 80 workmen with retrospective effect (as per list attached) under direct payment system in the services of Food Corporation of India and also allowing payment of wages to the workers directly by Food Corporation of India are justified? If yes, to what relief are the concerned workmen entitled and from which date?"

FACTUAL MATRIX

4. That the brief facts leading to this reference are that a settlement dated 20.6.1998, titled as "Minutes of The Meeting held on 20.6.1998" was arrived at between the Union and the management "in order to normalize the situation in the U.P. and also to fulfill the long pending demands of the workers."

5. That Para No. 2 of the said settlement, which is relevant for the purpose of the above reference, reads as under:

> "It was agreed upon that 80 workers shall be employed at Jwalapur out of the list of 160 workers who have worked there earlier under the contractor and the list and bio-data of these 80 workers shall be provided by the Union and the entire 160 workers are their members. If the workload increases in future, additional workers shall be provided by the Union on the request of the management , out of the list of 160 workers as mentioned earlier."

A true copy of the said settlement is annexed hereto and marked as Annexure W-1.

6. That in compliance with the stipulation in the aforesaid para, the Union, supplied, on 26.12.1998, bio-data in respect of 80 (eighty) workmen alongwith their photographs to the District Manager, Food Corporation of India, Srinagar, Garwal. A true copy of the letter No. FCIWU/DM(UP)/98/786 dated 26.12.1998 of the Union, duly receipted by the Assistant Manager of the FCI, Srinagar, is annexed hereto and marked as Annexure W-2 .

7. That it may also be pertinent to mention at this stage that the Union had filed a Writ Petition WP No. 187(SS of 2005) in the Hon'ble High Court of Uttrakhand, Nainital and the Hon'ble Court was pleased to pass an order on 20.3.2006, a copy of which is annexed hereto and marked as Annexure W-3 . The relevant portion of the said order is extracted below:

> "in view of the discussion aforesaid, we are convinced that there can be conciliation in the matters under dispute with regard to the points raised herein. The writ petitioners, therefore, my move the industrial Adjudicator under the provisions of the Industrial Disputes Act, 1947. The petitioner are given 15 day's time to approach the Assistant Labour Commissioner shall concluded the conciliation proceedings within one month. If conciliation fails, he shall report the matter to the Appropriate Government, which shall make a reference to the Labour Court within a period of one month. The Labour Court concerned shall then decide the dispute, according to law, within a period of three months." (emphasis supplied)

8. That the above extracted order was modified by the Hon'ble High Court of Uttrakhand in WP No. 487 of 2005 on 6.6.2007 as under:

Hon'ble Rajesh Tandon, J

1. Heard Sri A. Kudesia, counsel for the applicant.

2. Counsel for the petitioner has filed present application for modification in terms of paragraphs 4 and 5 of the affidavit filed along with the modification application. The same is quoted below:

> "4 That this Hon'ble Court while reserving the judgment gave assurance that in case of the petitioners the writ petition is to be taken into consideration while passing the order but it has been left in the judgment and order dated 20.3.2006 due to typographical error.
>
> 5. That as the case of the petitioner is different than the bunch which is decided but as this Hon'ble court has referred the matter to Assistant Labour commissioner and it may be directed by this Hon'ble High that Assistant Labour Commissioner may consider the case in the light of the settlement dated 20.6.1998 as stated in Para 2,3 and 4 of the writ petition and further the Hon'ble Court may kindly be please to grant some additional time for approaching before Additional Labour Commissioner as the time granted have come to an end."

3. Without considering the same on merits, it will be open for the authority concerned to consider the same in accordance with law.

4. Subject to aforesaid observation, modification application is disposed of.

Sd/-

6.6.2007 (RAJESH TANDON, J)

A copy of the said order is annexes herewith and marked as Annexure W-4.

9. That as the management failed to absorb the eighty workmen at Jwalapur Depot, the Union raised an industrial dispute before the Assistant Labour Commissioner (Central), Dehradun on 12.07.2007 challenging the grossly arbitrary and wholly unjust action of the management on the following among other:-

GROUNDS

A. BECAUSE Joint Manager, Food Corporation of India , Lucknow, accepting their legal responsibility and moral duty, directed the District Manager, Food Corporation of India, Srinagar, Garwal on 22.6.1998 to implement the decision (dated 20.6.1998) of the meeting at the earliest and inform the Regional Office within a week. A copy of the letter dated 22.6.1998 of

the Regional Office, Food Corporation of India, Lucknow (with clean typed copy) is annexed hereto and marked as Annexure W-5 colly.

B. Because the 80 (eighty) workmen concerned had been working at Jwalapur Depot for more than ten(10) years and were being paid their wages by the management, which also used to deduct their share of Provident Fund and used to deposit the same with the authorities concerned.

C. Because the workmen were stopped from working in the year 1997 without assigning any reason against which the Union filed Writ Petition No. 6126/ 1997 (mentioned above) before the Hon'ble High Court of Allahabad, Lucknow Bench and as a result whereof, the settlement dated 20.6.1998 was arrived at.

D. Because the said settlement dated 20.6.1998 was duly registered with the Assistant Labour Commissioner (Central), Kanpur under the Industrial Disputes Act, 1947 and is , therefore, even otherwise legally enforceable.

E. Because the Union complied with the requirement of supplying the bio-data of all the eighty workmen to the District Manager, Srinagar long back in the year 1998 itself.

F. Because the management, being a Public Sector Undertaking and an 'other Authority under Articled 12 of the Constitution of India, is required and expected to function as a model employer.

G Because there can be no justification whatsoever for the gross delay of over ten years on the part of the management in not implementing an agreement entered with the Union which is duly registered under the trade Unions Act, 1926.

H. Because the management have caused serious hardship, suffering and monetary loss to the workmen concerned by their unjust, arbitrary, illegal and unfair action.

I. Because the workmen are entitled, apart from absorption in Jwalapur Depot of the Food Corporation of India, also to adequate monetary compensation for the loss suffered by them.

J. Because the right to life under Article 21 of the Constitution of India can have no meaning for a workman without reasonable and regular income to sustain himself and his family.

PRAYER

10. That in the above circumstances, it is most respectfully prayed that this Hon'ble Tribunal to –

(a) hold that the demand of the union for implementation of the settlement is justified;

(b) direct the management to implement the settlement dated 20.6.1998 with retrospective effect;

(c) direct the management to grant consequential benefits to the workmen concerned from the date of the settlement.

(c) direct payment of interest and cost in favour of the workman; and

(d) issue any other and/or further orders/directions as may be deemed just and proper.

Against claim statement management filed following written statement:-

1. That I am the Area manager of the Food Corporation of India, Srinagar (Garhawal) and am fully conversant with the facts of the case based upon official record maintained in the ordinary course of business and am duly authorized to swear this affidavit on behalf of the opposite party.

2. That there is absolutely no merit or substance or truth whatsoever in allegations of fact stated, documents placed on record by the Applicant and or the legal grounds urged by the applicant, which are denied as being factually incorrect and /or legally untenable.

3. That the claim of the claimant is liable to be dismissed as it is misconceived , false and frivolous and due to misjoinder of party .

4. That the petitioner not having impleaded the Food Corporation of India in proper legal manner or the Management of the Food Corporation of India, is not entitled to seek any relief against the FCI.

5. I State that I have gone through the copy of the Claim filed by respondent/workman, at the very outset the above named deponent most respectfully submits that he denies each and every averment made in the said claim is incorrect and is denied and every averment until and unless specifically admitted may be deemed to be denied.

6. That the claimant have already filed claim and sought similar relief in Transferred Id No. 69/2008 in Original I.D. 18 of 2006 titled MAZDOOR SANGH (U.P.) THROUGH THE GENERAL SECRETARY V/S FOOD CORPORATION OF INDIA, and same has already been decided on merits in favour Food Corporation Of India. The true copy of the award in Transferred Id. No. 69/2008 in Original I.D. 18 of 2006 titled MAZDOOR SANGH (U.P.) THROUGH THE GENERAL SECRETARY V/s. FOOD CORPORATION OF INDIA passed by the learned presiding officer Central Government Industrial Tribunal cum Labour Court is annexed herewith. It is pertinent to mention here that in the garb of union on various names

formed by the contractors/self proclaimed leaders filed the various claims on the same issue and same relief . The ID. 10.2006, ID No. 18 of 2006 and the ID 31/06 had been filed. The ID 10/2006 and I.D. No. 18 of 2006 has been decided by the learned presiding officer CGIT . The true copy of the award dated 11.3.2010 and dated 03.05.2010 is annexed herewith. Therefore the present claim is barred by resjudicata. R-A Colly.

7. That there was several unions has been constituted by the contractor mafia and under the garb or Union all are claiming similar relief against the Jawalapur Depot, and these unions created unrest therefore the work at Jawalapur Depot could not be performed and running huge loss.

8. That telegram No. F (78) 96 Jwalapur/Adhoc Dated 15.3.1997 was sent to Sh. Dheer Singh Bhisan Pal, Village Akoda Kala, Haridwar by the Dy. Manager (cont) for Sr. Regional Manager, FCI regarding their appointment as Adhoc Handling Transport Contractor at Jwalapur Depot, true copy whereof is placed on record and is marked as Annexure R/1.

9. That the services of the laboureres were always hired by the Opposite party through the Agency on the contract basis as per provisions of the Contract Labour (Regulation And Abolition Act., 1970). The few other/remaining documents related to the services hired by the opposite party have been annexed and marked as annexure R-2.

10. That it is specifically denied that any alleged member claimant worked under the Management as a mate at any time. The services of the labours were hired on contract basis as per provisions of the contract Labour (Regulation and Abolition Act. 1970).

11. That the remuneration for the period which labours worked as an Adhoc HTCC for FCI was properly and duly paid as per provisions of the contract Labour (Regulation and Abolition Act. 1970).

12. That FCI /Opposite party never deployed any Labour at any point of time but appointed handling –cum transport contractor (HTC) and got the work done through them.

13. That the workers union has itself accepted the facts that they were working under contractor during the period of 1994-95. It proves and substantiates FCI claim that depot was functioned under the contract system right from beginning /hiring till the closure of the operations in the depot.

14. That after the expiry of the contract of Sh. Dheer Singh Bhishan Pal and Mahipal Giri contractors M/s. Rana Transport Co. was appointed as regular HTC for a period of two years. After appointment of new contractor i.e. M/s Rana Transport Co. the Ex. Contractor's Labourers created unrest and insisted for their induction by the newly appointed contractors, who had already engaged their workers for handling work of the Depot become paralyzed and stop delivery to the state government were badly effected. Therefore, to solve the problem a meeting was held at regional level with the FCI worker's Union on 20.6.1998 in which it was agreed that the workers who were working with earlier contractors may be employed with the existing contractor and the list of the worker shall be provided by the union. But the existing contractor was not ready to engage the labours of ex. Contractors Hence, the efforts made by the Regional Level Meeting could be materialized. It further submitted that this Regional Meeting a committee of FCI officers contracted the ex. Contractors Sh. Dhir Singh (he is also filed ID case No. 10/2006 under the garb of the fabricated union, and judgment of the Court has been passed in favour of FCI) on 13.05.1998 at Jawalpur to obtain the list of eighty workers along with their present addresses so that the work may be provided to them through the then HTC M/s Rana Transport Co. But the ex. Contractor Sh. Dhir Singh flatly refused to give anything in writing as per D.O. letter No. S & C. 13 (5) /JWP/97/267 Dt. 15.05.98 . It is pertinent to mention here that for eighty workers inductment illegally with the corporation several unions have been claiming the same, and these unions created disturbance and panic at the work place of the Jawalpur Dept and due to the disturbance created by the various Contractors/ unions formed by the self proclaimed leaders the FCI suffered huge loss and constrained to discontinue the work in Jawalpur Depot. Therefore it was not possible for the FCI to provide work with the current contractor and Depot operations become standstill for long time. It is pertinent to mention that FCI never entered or agreed for direct engagement of labours as contract labours has been employed by the FCI.

15. That special appeal filed by the FCI /opposite party against the single judge order dated 2.8.2004 High Court Nainital W.P. No. 4393 filed by the Sh. Dhir Singh and others was disposed off.

16. That the FCI /Opposite party is the statutory body established by food corporation Act, 1964. It is pertinent to mention that each depot of the corporation is separate establishment.

17. It is submitted that the contract workers are not the workman of the FCI and there is no relationship of Master and Servant between the contract labour and Corporation. Therefore, the applicant has no right to raise the dispute of the contract workers

because they are not employees of the corporation. If there is any grievance the contract labour has right to take action against the contractor under whom they worked.

18. That it is submitted that the Depot functioned under contract system right from the day it was hired from the SWC/ state Government . State Government were appointed there. Jwalapur Depot had two Godowns of state Government and SWC where the food grains of the corporation being stored. These Godowns were hired from these agencies. In both the Godowns the agencies stored the food grains of state government/other agencies and FCI. FCI was not the exclusive user of these Godowns. It is further submitted that both the Godowns due to the huge loss caused by the various unions formed by the contractors /self claimed leaders.

19. That it is most respectfully submitted that at Jawalapur Depot FCI Opposite party never deployed any labour at any point of time but appointed handling-cum-transport contractor (HTC) and got the work done through them. The workers union has itself accepted the facts that they were working under contractor during the period of 1994-95. It proves and substantiates FCI claim that depot was functioning under contract up to the year 1996. In fact, the said depot functioned under the contract system right from beginning /hiring till the closure of the operations in the depot. It is stated in the representation that contractor failed to pay the wages.

PARA WISE REPLY ON MERITS :—

1. It is most respectfully submitted that after the expiry of the contract of Sh. Dheer Singh, Bishan Pal and Mahipal Giri Contractors M/s Rana Transport Co. was appointed as regular HTC (for a period of two years. After appointment of new contractors i.e. M/s Rana Transport the Ex. Contractor's Labours created unrest and insisted for their employment by the newly appointed contractors. Who has already engaged their workers for handling work for the Depot due to the dispute between the groups deliveries to the state Government were badly affected. Therefore to solve the problem a meeting was held at regional level with the FCI workers Union on 20.6.1998 in which it was agreed that the workers who were working with earlier contractors may be employed with the existing contractors and list of the worker's shall be provided by the Union. But the existing contractor was not ready to engage the labour of the ex. contractor. Hence, the efforts taken at the regional level meeting could not be materialized. It is further submitted that before this Regional meetings a committee of FCI officers contacted the Ex. Contractor M/s Dheer Singh on 13.05.1998 at Jwalapur to obtain the list of eighty workers along with their present addresses so that the workman may be provided to them through the them HTC (M/s Rana Transport co. but the ex. Contractor M/s Dheer Singh flatly refused to give anything in writing as per D/O . Srinagar letter No. S & C 13 (5) JWP/97/267 Dated 15.05.1998. Therefore it was not possible for the FCI to provide work with the current contractor and Depot operations came to standstill for long time. It is pertinent to mention here that the list annexed with the present claim by the claimant is not only bogus but also deferred from the list submitted on 03.11.1998. It is pertinent to mention that FCI never entered or engaged for direct engagement of labours.

2. That the content of the para No. 02 of the statement of claim need no reply.

3. That the content of Para No. 03 of the application are wrong, hence vehemently denied. It is submitted that Jwalapur Depot was hired Godown form state Govt. and SWC on actual utilization basis. The handling and transport work has been arranged through the HTC since its beginning. HTCs were appointed by FCI from time to time. FCI has never engaged labour directly. Moreover the Govt. of India who is appropriate authority to abolish the contract system from the establishment of FCI has not issued any notification for abolition of contract system for Jwalapur Depot. Hence the question of direct engagement of labour at Jwalapur depot by FCI does not arise.

4. That the contents of para 4-9 are misconstrued hence vehemently denied. It is most respectfully submitted that the Hon'ble High Court vide order dated pleased to permit the respondent that if work is available the FCI shall take the work from those include in the seniority–list provisionally prepared and referred in the letter dated 27/28-10-2003. (annexure 3 of WP No. 1981 of 2003.) The Hon'ble High Court further pleased to clear that any incidental expression of opinion in this judgment with regard to the merit of the case shall have no bearing and the case of the parties shall be decided by the Industrial adjudicator according to the law applicable thereto. The Hon'ble Hight Court pleased to set aside the order dated 0.08.2004 passed by the Single. Judge. It is pertinent to mention here that most of mafia/contractors constituted there union with malafide intention and severally fighting and tensions has been roped amongst the unions and because of their fight amongst the unions the corporation could not be able to continue function at the Jwalapur depot and because of the unrest created by the unions formed by the contractors/mafia the depot was running huge loss. It is most respectfully submitted that the claimant has already field another claim, the award is the said claim is reserved for orders. Therefore the claim has been barred as per principle of res judicata.

In the above mentioned facts and circumstances the claim of the claimants may kindly be dismissed.

Workmen filed rejoinder on 14.3.2011. Wherein they stated as follows:-

1. Para 1 is formal and does not require any reply.

2. That the contents of para 2 of the preliminary objections, as stated, are wrong, incorrect, misleading and motivated. It is reiterated that the Statement of claim, as filed before this Hon'ble Tribunal, is factually correct and legally tenable.

3. That the contents of para 3 of the Preliminary Objections is misconceived and baseless. It is wrong and denied that the statement of claim is in any manner false and frivolous or that the same is liable to be dismissed for mis-joinder of party. In terms of Section 2(g) of the Industrial Disputes Act, 1947 , it is for the FCI to notify the prescribed authority which it does not appear to have done as the depot is illegally closed. Otherwise, it is the head of the department. Therefore, the Statement of Claim has to be read in conjunction with the corrected order of reference dated 27.10.2009 which has clearly shown the Senior Regional Manager, FCI, Dehradun and the Chairman and Managing Director, FCI, New Delhi as he parties representing the management. Therefore, management in the Statement of Claim will have to be read as FCI as represented by the Senior Regional Manager, Dehradun and the CMD, New Delhi. It is , therefore, denied that there has been any mis-joinder of parties. Moreover, the reference as made in the year 2009 by the appropriate Government to this Hon'ble Tribunal , was never challenged by the management in the Hon'ble Tribunal, was never challenged by the management in the Hon'ble Delhi High Court on this score. The so called objection now raised is, therefore, untenable, misconceived and hence denied.

4. That the contents of para 4 are vague, confused and unclear . The same are therefore, denied. Reply given in para 3 above may also kindly be seen in this connection.

5. Para 5 is formal. In any case, it is denied that the deponent has carefully gone through the Statement of Claim and understood its contents in proper perspective. It is submitted that the deponent has mechanically signed the affidavit (obviously prepared by some body else) without any application of mind on his part to the facts of the present case.

6. That the contents of para 6 of the Preliminary objections are wholly and entirely wrong and therefore denied. It is specifically and vehemently denied that the claimant have already filed claim and sought similar relief in Transferred I.D. No. 69/2008 V/s FCI" or I.D. No. 10/ 2006 decided in the Ld. CGIT No. 1 Karkardooma, Delhi . It is submitted with respect that the above reference has been made to this Hon'ble Tribunal on the basis of the industrial dispute raised by this Union which is the largest and most representative trade union of handling workers in the Food Corporation of India and with whom the management of FCI have entered into several agreements /settlements, including the settlement dated 20.6.1998. The reference mentioned in this para by the management were obtained by trade unions which were not representative in character and they also misrepresented true facts with the result that both the references were answered against the workmen. In fact, the FCI Handling Workers Union was not even in existence in June, 1998 when the settlement was signed by this Union with the management of FCI. It is further submitted that the terms of reference made to this Hon'ble Tribunal by the appropriate Government are very different from, the above mentioned reference. It is accordingly denied that the present reference. Which relates to non-implementation of settlement dated 20.6.1998, is barred by res-judicata, as alleged or at all.

7. That the contents of this para of the Preliminary Objections are denied for want of knowledge . However , the averment relating to constitution of union by the contractor mafia is false and strongly denied so far as this unrest or as claimed relief similar to the relief claimed by other Unions against Jwalapur Depot.

8. That the contents of this para, which are totally irrelevant, are denied for want of knowledge.

9. That the contents of this para of the Preliminary Objections are neither correct nor relevant. A perusal of the Settlement dated 20.6.1998 (Annexure W-1 to the statement of claim) would show beyond any doubt that there was no stipulation, and in fact not even a whisper , that the 80 workers shall be employed at Jwalapur Depot through a contractor. Therefore, the averment made by the management in this para "that the services of the labourers were always hired by the Opposite Party through the Agency of contract basis….." is both misleading and misconceived . Therefore, it is reiterated that the said Settlement clearly provided for direct employment of 80 workers by the management of the FCI at Jwalapur Depot.

10. That the contents of this para are not only incorrect but knowingly misleading. In this connection, kind attention of this Hon'ble Tribunal is invited to the following observations made by Hon'ble CGIT No. 1, New Delhi in the award dt. 11.3.2010:

> "When the said argument is perused, it came to light that it was agreed between the Corporation and FCI Workers Union that 80 workers shall be employed at Jwalapur Depot, out of the list of 160 workers who had worked there under the contractor."

It would therefore, be evident that regardless of the past practice, the management of FCI had agreed to directly employ 80 workers under its own supervision and control in terms of the settlement dated 20.6.1998.

11. That this para of the preliminary objections is wholly irrelevant. Hence , no reply is necessary.

12. &

13. That merely because the FCI never deployed any labour directly in the past does not mean that it can employ the workers directly for doing the handling work.

14. That the statement made in this para that on 20.6.1998 it was agreed that the workers who were working with earlier contractor may be employed with existing contractor is wholly false. A perusal of the Settlement (Annexure W-1 to the Statement of Claim) will show that the underlined words have been interpolated by the management and were never there in the said Agreement. As already explained in para 6 above, the references mentioned in this para were obtained by unrepresentative trade unions by misrepresenting facts. It is, therefore, totally wrong for the management to say that FCI never entered or agreed for direct any engagement of labourers as contract labour has never been employed by FCI."

15. Matter of record.

16. Does not require any reply as the contents of this para are irrelevant for the purpose of the present industrial dispute pending adjudication by this Hon'ble Tribunal.

17. Contents of this para are both misleading and misconceived . The management had clearly agreed to employ 80 workers directly at Jwalapur Depot under the settlement dated 20.6.1998.

18. That the contents of this para, other than what is a matter of record, are denied as being wrong , misleading and irrelevant.

19. That the contents of this para are misleading and wrong. The fact is that the management of FCI consciously agreed on 20.6.1998 to employ 80 workers directly.

REJOINDER TO PARAWISE REPLY

1. That the contents of para 1 of the reply (Written Statement) of the management are incorrect , wrong , baseless and misleading . The same are, therefore, denied and the contents of corresponding para of the Statement of Claim are reiterated as correct.

2. No rejoinder is called for.

3. That the contents of this para of the Written Statement are incorrect and wrong. The fact that a godown is a hired one or because the appropriate government has not issued a notification under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 prohibiting employment of contrac labour, does not prevent the management in any way from engaging direct labour. The averment made is wholly wrong and specious.

4-9. That the contents of these paras of the Written Statement, excepting what is a matter of record, are wrong and denied and the contents of the corresponding paras of the statement of claim are reiterated and re-affirmed as correct.

It is, therefore , submitted that the claim filed by this Union is correct, both in law and on facts, and may kindly be allowed in the interest of justice and equity.

It is relevant to mention to here that workmen moved an application for transfer of the instant ID to the CGIT Lucknow which was alleged to be pending for adjudication but no transfer order from ministry has been received.

On 8.1.2013 workmen filed rejoinder again. Copy of which furnished to management.

In this rejoinder workmen are stated as follows:-

Reply to Preliminary Objection

1. That he contents of this para are wrong and incorrect as no authority letter has been filed with the affidavit. It is denied that Shri Darbara Singh was validly authorized by the competent authority.

2. That the contents of para 2 of the preliminary objections are not only wrong and incorrect but contemptuous of the orders passed by the Hon'ble High Court of Uttrakhand in WP (C) No. 187 (SS) of 2005. The grounds urged by this Union in the Statement of Claim are legally correct and valid and the same are re-iterated . If the management was so merit or the reference was illegal, nothing prevented it for challenging the same before the Hon'ble High Court and praying for quashing of the reference . In the absence of any restraint order, this Hon'ble Tribunal has to proceed with the reference made by the "appropriate Government" and render an award based on the pleadings and evidence of the parties concerned. Kind attention of this Hon'ble Tribunal is invited to the orders dated 20.3.2006 passed by the Hon'ble Mr. Justice Rajesh Tandon in WP (C) No. 187(SCC) of 2005, Annexure W-3 to the statement of Claim. It will be kindly seen therefrom that the reference to this Hon'ble Tribunal has been made by the appropriate Government in compliance with the directions given by the Hon'ble High Court of Uttrakhand. There is , as such, no merit in the so-called objections raised by the management in this para.

3. That the reply given in the preceding para equally applies to this objection also. Kind attention of the Hon'ble Tribunal is invited to the award dated 3.5.2010 in ID. No. 69 of 2008 wherein the management has took the contrary plea that the reference "should have been through someone like the General Manager or party". It may be added that in terms of Section 2(g) of the Industrial Disputes Act, 1947 , it was for the FCI to notify the prescribed authority which it does not appear to have done as the depot is illegally closed. Otherwise, it is the head of the department. Therefore, the Statement of Claim has to be read in conjunction with the corrected order of reference dated 27.10.2009 which has clearly shown the Senior Regional Manager, FCI, Dehradun and the Chairman and Managing Director, FCI, New Delhi as he parties

representing the management. It is , therefore, denied that there has been any mis-joinder of parties. Moreover, the reference as made in the year 2009 by the appropriate Government to this Hon'ble Tribunal , was never challenged by the management in the Hon'ble Tribunal, was never challenged by the management in the Hon'ble Delhi High Court on this score. The so called objection now raised is, therefore, untenable, misconceived and hence denied.

4. That the contents of para 4 of the Preliminary Objection are wrong, incorrect and misleading. The FCI has been impleaded through its various officers as it, being a corporate body, function through them only. As already submitted above if the reference as made by the appropriate Government was legally incorrect, it was open to the management to challenge the same before the Hon'ble High Court, which was never done. Incidentally, such hyper technical objections have even otherwise no place in adjudication of labour disputes.

5. That the contents of para 5 of the Preliminary Objections are wrong and therefore, denied. As already submitted above, the Statement of Claim filed by this Union is factually correct and based on the reference made by the appropriate Government in compliance with the directions given by the Hon'ble High Court of Uttrakhand. It is submitted that the deponent had mechanically signed the affidavit without carefully reading the same and application of mind on his part.

6. That the contents of para 6 of the Preliminary objections are wholly and entirely wrong and therefore denied. It is specifically and vehemently denied that the claimant have already filed claim and sought similar relief in Transferred I.D. No. 69/2008 V/s FCI" or I.D. No. 10/ 2006 decided in the Ld. CGIT No. 1 Karkardooma , Delhi. It is submitted with respect that the above reference has been made to this Hon'ble Tribunal on the basis of the industrial dispute raised by this Union which is the largest and most representative trade union of handling workers in the Food Corporation of India and with whom the management of FCI have entered into several agreements/ settlements, including the settlement dated 20.6.1998. The reference mentioned in this para by the management were obtained by trade unions which were not representative in character and they also misrepresented true facts with the result that both the references were answered against the workmen. In fact, the FCI Handling Workers Union was not even in existence in June, 1998 when the settlement was signed by this Union with the management of FCI. It is further submitted that the terms of reference made to this Hon'ble Tribunal by the appropriate Government are very different from, the above mentioned reference. It is accordingly denied that the present reference. Which relates to non-implementation of settlement dated 20.6.1998, is barred by res-judicata, as alleged or at all.

7. That the contents of this para of the Preliminary Objections are denied for want of knowledge . As already submitted , FCI Workers Union only represents the majority of food handling workers in the FCI , including the Jwalapur Depot. The Averment relating to constitution of union by the contractor mafia is false and strongly denied so far as this Union is concerned. It is denied that either the FCIWU created any unrest or has claimed relief similar to the relief claimed by other Unions against Jwalapur Depot.

8. That the contents of this para are denied for want of knowledge as a copy of the said telegram was not endorsed to this Union. The relevance of the said telegram has also not been disclosed by the management.

9. That the contents of this para of the Preliminary objections are neither correct nor relevant. A perusal of the Settlement dated 20.6.1998 (Annexure W-1 to be Statement of Claim) would show beyond any doubt that there was no stipulation, and in fact not even a whisper that the 80 workers shall be employed at Jwalapur Depot through a contractor. Therefore, the averment made by the management in this para ' that the services of the labourers were always hired by the Opposite Party through the Agency of contract basis….." is both misleading and irrelevant. It is manifest that the management is trying to confuse the matter to cloud the real issue relating to non-implementation of the settlement dated 20.6.1998 by it.

10. That the contents of this para are not only incorrect but knowingly misleading. In this connection, kind attention of this Hon'ble Tribunal is invited to the following observations made by Hon'ble CGIT No. 1, New Delhi in the award dt. 11.3.2010:

> "When the said argument is perused, it came to light that it was agreed between the Corporation and FCI Workers Union that 80 workers shall be employed at Jwalapur Depot, out of the list of 160 workers who had worked there under the contractor."

It would therefore, be evident that regardless of the past practice, the management of FCI had agreed to directly employ 80 workers under its own supervision and control in terms of the settlement dated 20.6.1998.

11. That this para of the preliminary objections is wholly irrelevant. Hence , no reply is necessary.

12. &

13. That merely because the FCI never deployed any labour directly in the past does not mean that it can employ the workers directly for doing the handling work.

14. That the contents of this para of the Preliminary Objections are wholly incorrect, grossly misleading and a willful distortion of facts. This will be evident from a perusal of relevant para in the Agreement 20.6.1998 which is reproduced below for the kind perusal of this Hon'ble Court:

"it was agreed upon that 80 workers shall be employed at the Jwalapur out of list of 160 workers who have worked there earlier under the contractor and the list and bio-data of these 80 workers shall be provided by the Union and the entire 160 workers are their members."

Therefore, the averment now made by the FCI that it was agreed that the workers may be employed by the existing contractor is wholly , false and unbecoming of a public sector undertaking to make such a knowingly incorrect averment solely for the purpose of misleading the Hon'ble Tribunal. It is pertinent to mention that no contractor was a party to the Agreement dated 20.6.1998. Rest of the averments are irrelevant and beyond the terms of reference made to this Hon'ble Tribunal. It is therefore, wholly incorrect and wrong for the management to say that it never agreed to direct engagement of labour at Jwalapur depot… The fact that 80 workers were agreed to be employed by the FCI itself is also clear from the letter dated 20.6.1998 written by the Joint Manager (Contracts) to the District Manager, Srinagar, a copy whereof has already been filed by this Union with the Statement of Claim.

15. That a copy of the orders passed by the Hon'ble High Court of Uttrakhand in the Appeal filed by the management have not filed and brought on record by the Management. No comments can be therefore, be offered in reply to this para at this stage. As and when a copy of the said order is brought on record by the management , the FCI Workers Union will file its reply thereto.

16. That while it is not denied that FCI is a statutory body, the purport of the concluding line "that each depot of the corporation is a separate establishment "requires elaboration and clarification . Incidentally , this para does not constitute any preliminary objection.

17. Contents of this para are both misleading and misconceived . As already submitted, the reference made to this Hon'ble Tribunal it about non-complementation of the settlement dated 20.6.1998, which the management cannot now pretend that they did not understand the import of the words used in the said Settlement. It is also denied that this union has no right to raise the present Industrial Dispute.

18. That the contents of this para, other than what is a matter of record, are denied as being wrong , misleading and irrelevant.

19. That the contents of this para are misleading and wrong. The fact is that the management of FCI consciously agreed on 20.6.1998 to employ 80 workers directly.

REJOINDER TO PARAWISE REPLY

1. That the contents of para 1 of the reply (Written Statement) of the management are incorrect, wrong, baseless and misleading. The same are, therefore, denied and the contents of corresponding para of the Statement of Claim are reiterated as correct.

2. No rejoinder is called for.

3. That the contents of this para of the Written Statement are incorrect and wrong. The fact that a godown is a hired one or because the appropriate government has not issued a notification under section 10 of the Contract Labour (Regulation & Abolition)Act, 1970 prohibiting employment of contract labour, does not prevent the management in any way from engaging direct labour. The averment made is wholly wrong and specious.

4-9. That the contents of these paras of the Written Statement, excepting what is a matter of record, are wrong and denied and the contents of the corresponding paras of the statement of claim are reiterated and re-affirmed as correct.

It is, therefore , submitted that the claim filed by this Union is correct, both in law and on facts, and may kindly be allowed in the interest of justice and equity.

On 15.4.2013 My Ld predecessors Dr. R.K.Yadav framed following issues:-

(1) Whether award dated 11.3.2010 passed in Industrial Dispute registered as No. 10/2006 with this Tribunal titled as Dhir Singh and others Vs. Food Corporation of India, frustrates claim made by the claimant union?

(2) As in terms of reference.

Workmen in support of their case filled affidavit of Sh. M.C. Parida. Wherein he stated as follows:-

1. That I am the Vice-President of FCI Workers Union and therefore well versed with the facts of the above matter and competent to affirm and file this affidavit in this Hon'ble Tribunal.

2. I say that a settlement titled "Minutes of the Meeting" was arrived at between the FCI Workers Union and the management of Food Corporation of India "in order to normalize the situation in U.P. and also to fulfill the long pending demands of the workers."

3. That para No. 2 of the above said settlement provided as under"

"It was agreed upon that 80 workers shall be employed at Jwalapur Depot out of the list of 160 workers who have worked there earlier under the contractor and the list and bio-data of these 80 workers shall be provide by the Union and the entire 160 workers are their members. If the workload increase in future, additional workers shall be provided by the Union on the request of the management out of the list of 160 workers as mentioned earlier."

A copy of the said settlement dated 20.6.1998 has already been filed with the statement of Claim filed with

the Statement by the FCI workers Union and may kindly be marked as Ex. WW-1/1.

4. That in compliance with the stipulation in the above para of the Settlement (ANNEXURE WW-1/1, the FCI Worker Union supplied on 23.12.1998 bio-data of 80 workers along with their photographs to the District manager , F.C.I ., Srinagar, Garwal. A true copy of the said letter, bearing No. FCIWU/DM(U.P.) 98/786 dated 26.12.1998 has already been filed with the Statement of Claim and may be marked as Ex. WW1/2.

5. That as the management failed to implement the settlement dated 20.6.1998, the FCI Workers Union filed a writ petition in the Hon'ble High Court of Uttrakhand at Nainital, being Writ Petition No. 187 (SS of 2005), as a result whereof the following orders came to be passed.

> "In view of the above discussion, we are convinced that there can be conciliation in the matters under dispute with regard to the points raised herein. The writ petitioners may therefore move the Industrial Adjudicator under the provisions of the Industrial Disputes Act, 1947. The Petitioners are given 15 days time to approach the Assistant labour Commissioner, who shall conclude the proceedings within one month. If conciliation fails, he shall report the matter to the Appropriate Government, which shall make a reference to the labour Court within a period of one month. The Labour Court concerned shall then decide the dispute , according to law, within a period of three months. (Emphasis provided).

6. I may add that the above order was modified on 06.06.2007 and a copy of the modified order has also been filed with the Statement of Claim.

7. I am advised to say that the objections raised by the management in their Written Statement are misconceived and incorrect because the awards in Transferred I.D. No. 69/2008 and I.D. No. 10/2006 were made on the basis of purported disputes raised by trade unions who were either not competent or not even in existence when the settlement Annexure WW-1/1 was signed by the FCI Workers Union.

8. That in addition, the present reference relates to implementation of settlement dated 20.6.1998 and has been made in compliance with directions given by the Hon'ble Court of Uttrakhand. I, therefore say that the above reference made to this Hon'ble Tribunal is valid, competent and legally maintainable.

9. I also rely upon the Statement of Claim and documents filed therewith and request that the same may kindly be treated as part of my evidence.

His affidavit was tender on 31.07.2013. He was partly cross-examined on same day.

His examination in chief and cross-examination is as follows:-

I relied on my affidavit Ex. WW1/A .Which is signed A & B . I also relied on documents WW1/1, WW1/2 already filed with the statement of claim.

XXX by Sh. Anil Sharma, A/R for management.

I am vice president of the union since about last 25 years. I am working in FCI as a Sardar. I joined on 15.6.1973. No appointment letter was issued to me. I was never posted at Jwalapur Depot. I am deposing on the basis of my personal knowledge and the record of the union. It is wrong to say that because I was never posted in Jwalapur Depot. I do not have knowledge about the said Depot. It is correct that regular employees of the FCI are given appointment letter by the corporation on their appointment. No appointment letter was given to the workmen in dispute as they were contract labour.The workers were paid during the period from 1994 to 1998. The payment was made through the contractors. The union made representation in respect of the workmen in dispute and I can file the same before this Hon'ble Tribunal on the next date.

Cross-examination deferred.

He was further cross-examined on 23.10.2013.

His cross-examination is as follows:-

Contents of two letters WW1/M1 and WW1/M2 are correct which have been filed today. I am representative of workers union. There was no advertisement in newspaper for appointment of Workmen. We have applied in written to management. Copy of settlement is on record. Whatever is mentioned in that is correct.

Management in support of his case filled affidavit of Sh. Dhirendra Singh on 20.11.2013. Wherein he stated as follows:—

1. That I am the Manager and officer Incharge of the above said case and am acquainted with facts to the above said case on the basis of record available at the office. As such competent to swear this affidavit.

2. That the claim of the claimant is liable to be dismissed as it is misconceived , false, frivolous and due to misjoinder of parties.

3. That the claimant not having impleaded the food Corporation of India in proper and legal manner or the claimant is not entitled to seek any relief against the FCI.

4. That the Claimant was the contractual worker and there was no employer and employee relationship between the Management of FCI and the Claimant. They were the workers of the contractor, who exercised unassailable administrative control over these claimant and made payment to them directly. Moreover these workmen were never issued appointment letters by the FCI and they were engaged and deployed by the Contractor.

5. That they were neither appointed by the Management of the FCI nor posted, it was the contractor, who deployed them at various places.

6. That the claimant were neither appointed by the FCI Management nor they were on the pay roll of the FCI.

7. That the Claimant was not the regular worker of the Management of FCI.

8. That the payment of wages to these claimants was directly made by the contractor.

9. That the complainant was engaged by HTC on the basis of requirement and they were removed when there was no requirement. No harassment and exploitation against these claimants was practiced by the Management of the FCI. It is respectfully submitted that there is no question arise for any termination from the service of corporation as there is no violation of any provision of Industrial Law. It is pertinent to mention here that the services of claimants were hired through the contractor on the contract basis as per the provisions of the contract Labour (Regulation and Abolition Act 1970).

11. That consolidated contracted amount was paid to the contractor and thereafter wages to workmen were paid directly to the contractor and not be the FCI.

12. That the claimant have already filed claim and sought similar relief in transferred I.D. No. 69/2008 and the same has already been decided on merits in favor of the corporation. It is pertinent to mention here that in the garb of union on various names formed by the contractor/self claimed leaders filed various claims on the same issue and same relief, which were decided in favor of the Corporation. The true copy of the award dated 11.3.2010 and 3.5.2010 are filed with the Reply be marked as MW-1/1.

13. That due to the unrest created by these unions the work at Jwalapur depot could not performed and was running huge loss. The telegram no. F.1 (78)/96 Jwalapur / Adhoc dated 15.3.97 was sent to Sh. Dheer Singh Bishan Pal, Village Akoda Kala, Haridwar regarding their appointment as Adhoc Handling Transport Contractor at Jwalapur Depot. The true copy of the same is filed with the Reply be marked as MW-1/2.

14. That it is pertinent to mention here that the respondent invited the tenders under HTC provision and appointed by HTC and got the work done through them. The worker union has itself accepted the fact that they were working under the contractor during the period 1994-1995 . it proves and substantiates the respondent claim that depot was functioned under the contract system up to the year 1996. In fact the said depot was functioned under the contract system right from beginning/hiring till the course of the operations in the depot. True copy of the relevant documents are filed with the reply and he marked as MW-1/3 (Colly).

15. That expiry of the contract of earlier contractors under which the claimant were working, a new Contractor M/s. Rana Transport Co. was appointed as regular HTC and the ex- contractor's labour created unrest and insisted for their induction in newly appointed contractor, who had already engaged their workers for handling work of the depot become paralyzed therefore delivery to the State Govt were badly effected. Therefore to solve the problem a meeting was held with the worker union on 20.6.1998 in which it was agreed that the 80 workers who were working under the earlier contractors may be employed with the existing contractor but the other worker union was claiming for the same relief and the existing contractor was not ready to engage the labour of Ex contractors hence the efforts made by the corporation could not be materialized. Due to the work the corporation constrained to discontinue the work in Jwalapur Depot and dehired the Godown .

It is therefore the present complaint of the complainant is wholly misconceived, groundless and unsustainable in law and liable to be dismissed with cost.

His affidavit was tender on 10.12.2013. He was partly cross-examined on same day.

His examination in chief and cross-examination is as follows:-

I tender in evidence my affidavit Ex. MW1/A . Which bears my signature at point A and B . I rely upon documents MW1/1 to MW1/3 (Colly).

XXX by Sh. Bijay Kumar, A/R for the workman.

I am working with management since 1997. I was working as manager at Srinagar in year 1997-98 . It is correct that I am deposing as per record. I have no personal knowledge.

Ques:- Can you say that FCI handling workers union was not in existence in 1997-1998.

Ans. It is a matter of record. Aforesaid facts is not in my personal knowledge.

I have no knowledge whether in 1997-98 there was FCI . Handling workers unions was in existence or not.

It is correct that on 20.6.1998 memorandum of understanding was signed between FCI workers union and FCI .

Aforesaid memorandum was not signed by F.C.I. Handling workers.

I cannot say whether it was signed by F.C.I. Majdoor Sangh Lucknow.

I have gone through the aforesaid memorandum.

It is correct that on aforesaid memorandum there no sign of F.C.I . Majdoor Sangh Lucknow.

I cannot say whether F.C.I. Majdoor Sangh was party to aforesaid memorandum due or was not a representative union at Jwalapur.

I am not challenged the reference of the instant in Hon'ble High Court by way of writ petition.

It is correct that memorandum is signed by F.C.I worker union . It is correct that no contractor was party to M.O.U. dated 20.6.1998.

Ques- Whether F.C.I has given work to the so workers whose names and particulars are supplied by the F.C.I. worker union to the F.C.I. ?

Ans- This work was to be performed by Thekedar.

It is correct that F.C.I. worker union has not raised any issue except this before any Authority.

It is correct that no paper has been filed by management to show that contractor was directed to provide according to list of workmen.

It is correct that aforesaid settlement could not be implemented.

Written Argument on behalf of the Applicants/Workmen. Wherein they stated as follows :—

1. That the following industrial dispute was referred by the appropriate Government to this Hon'ble Tribunal for adjudication vide order dated 11.2.2009, which was later on corrected by the orders dated 27.10.2009:

> "Whether the demand of the FCI Workers Union that the management of FCI, Jwalapur should implement the settlement dated 20.6.1998 entered with FCI Workers Union and also absorb all the 80 workmen with retrospective effect (as per list attached) under direct payment system in the services of Food Corporation of India and also allowing payment of wages to the workers directly by Food Corporation of India are justified? If yes, to what relief are the concerned workmen entitled and from which date?"

2. That the brief facts leading to this reference are that a settlement dated 20.6.1998, titled as "Minutes of The Meeting" was arrived at between the Union and the management "in order to normalize the situation in the U.P. and also to fulfill the long pending demands of the workers."

3. That in compliance with the stipulation in the aforesaid settlement, the Union supplied, on 26.12.1998, the bio-data of 80(eighty) workmen alongwith their photographs to the District Manager, Food Corporation of India, Srinagar , Garwai . A true cop of the letter No. FCIWU/DU(UP) /98/786 dated 26.12.1998 of the Union, duly receipted by the Assistant Manager of the FCI, Srinagar, was annexed to the Statement of Claim as Annexure W-2.

4. That since the Settlement dated 20.6.1998 (Ex.WW-1/1) is very vital, critical and important, the relevant para thereof relating to Jwalapur Depot, is reproduced hereunder for better appreciation of the above industrial dispute:

> "It was agreed upon that 80 workers shall be employed at Jwalapur out of the list of 160 workers who have worked there earlier under the contractor and the list and bio-data of these 80 workers shall be provided by the Union and the entire 160 workers are their members. If the workload increases in future, additional workers shall be provided by the Union on the request of the management, out of the list of 160 workers as mentioned earlier."

5. That it will be evident from a perusal of settlement dated 20.6.1998 that the:-

(a) same was arrived at between the management and this Union only and neither any contractor nor any other was a partly to the same;

(b) The clause 2 of the Settlement relating to Jwalapur Depot and reproduced above in para 4 does not even whisper, and much less provide, that 80 workers (whose names and bio-data were to be provided by this Union) would be employed through any contractor.

(c) As the management was represented by an IAS Officer, then working as Sr. Regional Manager, it can not be said that he could not properly understand the contents of the said settlement or the context thereof.

5. That in view of the above, the following averment made in Written Statement (in para 14) is wholly incorrect, misleading and factually wrong.

> "Therefore , to solve the problem a meeting was held at regional level with FCI Workers Union on 20.6.1998 in which it was agreed that the workers who were working with earlier contractors may be employed with the existing contractor and the list of the worker shall be provided by the union"

6. The underlined words were not there in the settlement and have now been added by the management to mislead the Hon'ble Tribunal. Moreover, the settlement was duly registered with the Assistant labour Commissioner (C),Dehra Dun under the I.D. Act, 1947 and is therefore legally binding on the parties and a breach of the same constitutes an offence punishable under Section 29 of the I.D. Act. Therefore , the use of the "words may be employed" in the Written Statement of the management constitutes willful distortion and suppressin very. The management is therefore liable to be thrown out by this Hon'ble Tribunal on the strength of the dicta in S.P. Changalvaraya Naidu V/s Jagannath (dead) (AIR - 1994-SC-853)

7. That it may be further added that juncture that the Apex Court has further held in the case of P. Virudhachallam V/s management of Lotus Mills 1998 (1) SCC-650 that a settlement stands on a higher pedestal than even an order of a court. It has also been held in the case of ..Viveka… Nand Sethi V/s J. & K Bank -2005(5) SCC-337) that a settlement is a law between the parties . A copy each of the above three judgements is also placed below for the kind perusal of this Hon'ble Tribunal.

8. That the order preliminary objection taken in the Written Statement (para 6) to the effect "that the present claim is barred by re-judicata" is also misconceived, baseless and wrong for the reasons that:-

(a) the management never challenged the reference on the alleged ground of res-judicata before the High Court and no stay or restraint order against the above reference has been brought on the record;

(b) that neither the FCI (Handling) Workers Union nor the FCI Mazdoor Sangh, U.P, which obtained the earlier references; being I.D. No. 10/2006 and I.D No. 68/2008 respectively, by misrepresentation of facts, were parties to the settlement dated 20.6.1998 . In fact, the FCI(Handling) Workers Union even did not even exist in 1998.

(c) the present reference has been made by the "appropriate Government" in compliance with the directions of the Hon'ble High Court of Uttrakhand.

9. That as submitted in Ground 'B' of the Statement of Claim, 80 workers concerned had been working in Jwalapur Depot for over ten years and were being paid their wages by the management of FCI directly and their P.F. subscriptions were also being deducted by the management of F.C.I.

10. That it is also submitted that the argument of the F.C.I. that it had earlier employed the workers through the contractors only does not bar it from engaging them directly . Infact, F.C.I is presently employing 18376 departmental workers in 162 depots and 28803 direct payment system workers in 219 depots and the same is I consonance with the public policy not to exploit the contract system.

11. That in view of the above, it is requested that this Hon'ble Tribunal may allow the reference in favour of the workman and against the management.

Written Argument on behalf of the Management. Wherein it stated as follows:-

1. That the Claimant was the contractual worker and there was no employer and employee relationship between the Management of FCI and the claimant. They were the workers of the contractors, who exercised unassailable administrative control over these claimant and made payment to them directly. Moreover these workmen were never issued appointment letters by the FCI and they were engaged and deployed by the contractor.

2. That they were neither appointed by the management of the FCI nor posted, it was the contractor , who deployed them at various places.

3. That though the claimant worked with the FCI Management but they were neither appointed by the FCI management nor they were on the pay roll of the FCI.

4. That the claimant was not the regular worker of the management of FCI.

5. That the payment of wages to these claimants was directly made by the contractor.

6. That the claimant was engaged on the basis of requirement and they were removed when there was no requirement. No harassment and exploitation against these claimants was practiced by the management of the FCI. It is respectfully submitted that there is no question arise for any termination from the service of corporation as there is no violation of any provision of Industrial law. It is pertinent to mention here that the services of claimants were hired through the contractor on the contract basis as per the provisions of the contract labour. (Regulation and Abolition Act 1970).

7. That consolidated contracted amount was paid to the contractor and thereafter wages to workmen were paid directly to the contractor and not by the FCI.

8. That the claimant have already filed claim and sought similar relief in transferred I.D. No. 69 of 2008 and the same has already been decided on merits here that in the garb of union on various names formed by the contractor/self claimed leaders filed various claims on the same relief, which were decided in favor of the Corporation. The true copy of the award dated 11.3.2010 and 3.5.2010 are filed with the Reply be marked as MW-1/1.

9. That due to the unrest created by these unions, the work at Jwalapur depot could not performed and was running huge loss. The telegram no. F.1 (78) /96 Jwalapur/ Adhoc dated 15.3.97 was sent to Sh. Dheer Singh Bishan Pal, Village Akoda Kala, Haridwar regarding their appointment as Adhoc Handling Transport Contractor at jwalapur Depot .12. The true copy of the same is filed with the Reply be marked as MW-1/2.

10. That it is pertinent to mention here that the respondent invited the tenders under HTC provision and appointed by HTC and got the work done through them. The worker union has itself accepted the fact that they were working under the contractor during the period 1994-1995. It proves and substantiates the respondent claim that depot was functioned under the contract system up to the year 1996. In fact the said depot was functioned under the contract system right from beginning /hiring till the course of the operations in the depots. True copy of the relevant document are filed with the reply and be marked as MW-1/3(colly).

11. That expiry of the contract of earlier contractors under which the claimant were working , a new Contractor M/s Rana Transport Co. was appointed as regular HTC and the ex contractor's labour created unrest and insisted for their induction in newly appointed contractor, who had already engaged their workers for handling work of the depot become paralyzed therefore delivery to the State Govt. were badly effected. Therefore to solve the problem a meeting was held with the worker union on 20.6.1998 in which it was agreed that the 80 workers who were working

under the earlier contractors may be employed with the existing contractor but the other worker union was claiming for the same relief and the existing contractor was not ready to engage the labour of Ex. Contractors hence the efforts made by the corporation could not be materialized. Due to the standstill for long time the corporation constrained to discontinue the work in Jwalapur Depot and dehired Godown.

12. That one Hardeep Singh alongwith the other 79 worker file a writ petition before the Uttarakhand High Court being writ petition no. 187 of 2005 stating that the petitioners, who are the members of FCI, are contract labourers prior to 1996 and they are working for more than 10 years at Jwalapur Depot and are taking direct payment under the provident fund scheme and fund has been deducted since 1.1.96—15.8.97. The Hon'ble Court had finally disposed of the petition directing to approach proper forum.

It is therefore the present claim of the claimant is wholly misconceived, groundless and unsustainable in law and liable to be dismissed with cost.

In the light of contention and counter contention I perused the claim statement, written statement, rejoinder, evidence of the parties as well as written submission of Ld. A/R for the parties. Which shows that writ-petition no. 187(SS)2005 of 80 writ-petitioners has been decided on 20.3.2006 by Hon'ble High Court of Uttrakhand alongwith aforesaid writ-petition special appeal also been decided.

Through order dated 20.3.2006 is Lordship of Hon'ble High Court of Uttrakhand directed as follows:-

In view of the aforesaid,We are convinced that there can be conciliation in the matters under dispute with regard to the points raised herein. The writ petitioners, therefore, may move the industrial Adjudicator under the provisions of the Industrial Disputes Act, 1947. The petitioners are given 150 days' time to approach the Assistant Labour Commissioner shall conclude the conciliation proceedings within one month. If conciliation proceedings within one month. If conciliation fails, he shall report the matter to the Appropriate Government, which shall make a reference to the Labour Court within a period of one month. The Labour Court concerned shall then decide the dispute, according to law, within a period of three months.

In compliance of aforesaid direction of Hon'ble High Court of Uttrakhand certain workmen raised Industrial Dispute which was registered as ID. No. 10/2006 Dheer Singh and others V/s the Senior Regional Manager F.C.I. decided by Dr. R.K. Yadav, Presiding Officer, CGIT-1, Karkardooma Court, Delhi on 11.03.2010. Through award dated 11.03.2010 claim was found without merit and petitioners were held not entitled to any relief. Copy of this award is on record.

Similarly few workmen raised ID No. 18 of 2006 which was heard and decided by Sh. Ram Prakash, Presiding Officer, CGIT-cum-Labour Court , Kanpur on 03.5.2010. Through which no workmen was found entitled to any relief. Copy of this award is on record.

On the aforesaid grounds Ld.A/R for the management stressed that Claim of the claimants is wholly misconceived, groundless and unsustainable in law and liable to be dismissed with cost.

While on the other hand Ld. A/R for the workmen stressed that reference of the instant ID has been made incompliance of order of Hon'ble High Court of Uttrakhand.

Perusal of record makes it crystal clear that Award passed in aforesaid Industrial Dispute have become final because no appeal etc. is set to have been filed by workmen against awards passed against them.

Although proper remedy to workmen was to seek remedy against aforesaid Awards which have not been availed by them.

In this background principle of res-judicata is applicable because parties etc. are almost similar.

On the basis of aforesaid discussion I am of considered view that present Industrial Dispute is barred by principle of res-judicata. Hence Claim of claimants is liable to be dismissed and workmen is entitled to no relief.

Award is accordingly passed.

Dated : 24/04/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 26 मई, 2014

का.आ. 1621.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 54/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/5/2014 को प्राप्त हुआ था।

[सं. एल-22012/226/2004-आईआर (सीएम-II)]

बी. एम. पटनायक, डैस्क अधिकारी

New Delhi, the 26th May, 2014

S.O. 1621.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Mahakali Colliery of Western Coalfields Limited, and their workmen, received by the Central Government on 26/05/2014.

[No. L-22012/226/2004-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/54/2005 Date : 02.05.2014

Party No. 1 : The Sub Area Manager,
Mahakali Colliery of Western Coalfields Ltd.,
Post-Chandrapur,
Distt.-Chandrapur (MS)

Versus

Party No. 2 : Shri Sambhoo Vishwakarma,
General Secretary,
Bharatiya Koyla Khadan Mazdoor Sangh (BMS), Wardha Valley,
Vishwakarma Sadan,
At-Mahakali Colliery,
Post-Babupeth, Tah.-Chandrapur,
Chandrapur (MS)

AWARD

(Dated: 2nd May, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Mahakali Colliery of Western Coalfields Limited and their workman, Shri Mohindranath Roy, for adjudication, as per letter No.L-22012/226/2004-IR (CM-II) dated 29.06.2005, with the following schedule:-

> "Whether the action of the management in relation to Mahakali Colliery of WCL in reducing the pay from Rs. 203.69 day and allowances in group V-A of loader paid in July, 2001 to Rs. 129.79 per day and allowances in Cat.-II w.e.f. 01.08.2001 in respect of Shri Mohindranath Roy, Loader, Mahakali Colliery, WCL is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Mohindranath Roy, ('the workman" in short), filed the statement of claim through the union, Bhartiya Koyla Khadan Mazdoor Sangh (BMS) ("the union" in short) and the management of Western Coalfields Limited ("Party No. 1" in short) filed their written statement.

The case of the workman as presented by the union in the statement of claim is that it (union) is a registered Trade union under the Trade Unions Act, 1926 and party no.1 is a government company and is a state within Article 12 of the Constitution of India and under the approval of Ministry of Coal, Central Government constituted a Joint Bipartite Committee for the Coal Industry ("JBCCI" in short) consisting of all employers of Coal Industry and the five Central Trade Unions and the JBCCI jointly deliberated over the wage structure including dearness allowance, fitment in revised scale of pay, Pension, fringe benefits, service conditions and other allied matters including welfares/safety measures and such deliberations is known as "National Coal Wage Agreements" ("the NCWAs" in short) and the JBCCI has several committees and sub-committees for proper and uniform implementation of the provisions of NCWA in the entire Coal Industry and for maintaining uniformity and proper implementation, the Secretary, JBCCI issues implementation instructions from time to time and no unilateral decision can be taken by any subsidiary in contravention of the provisions contained in the NCWAs and the provisions are mandatory and binding on all coal companies including WCL and so far seven NCWAs have been signed so far, which are known as NCWAs-I, II, III, IV, V, VI, and VII dated 11.08.1974, 11.08.1979, 27.07.1989, 19.01.1996, 23.12.2000 and 15.07.2005 respectively and the workman was appointed as a piece rated loader in Group-VA on 25.12.1989 and a memorandum of settlement dated 02.11.1992 was signed under Section 12(1) of the Act, between the party No.1 and the Union, RKKMS (INTUC) over 10 point charter of demands before the Regional Labour Commissioner (C), Nagpur and by virtue of above settlement, the terms of the settlement become terms and conditions of service of the workman and are binding on the management and all the workmen and the said settlement is at par with an award and cannot be amended in any way except with the assistance with the Conciliation Officer. It is further pleaded by the union that as per the said settlement, the party No.1 agreed to provide alternate light job to the employees, particularly to loaders, who are physically weak due to their old age sickness or I.O.D., irrespective of vacancies and to fully protect the group wages including SPRA where ever applicable on conversion from piece rated to time rated/monthly rated and in terms of NCWA-VI, all the workmen were given minimum benefit of Rs.414.53 per month or Rs.15.94 per day and the loaders were placed in group V-A and on accounts of wage revision as per NCWA VI dated 23.12.2000, the workman was getting basic of Rs.203.69 and special piece rated allowance till the month of July, 2000 and the workman sustained injuries on duty during and in course of employment on 20.07.2000, while working as an underground loader at Mahakali Colliery and even after his sustaining injuries on duty on 20.07.2000, he continued to get the basic of Rs.203.69 and Rs.38.86 SPRA per day of group V-A in accordance with NCWA-VI up to July, 2001 and though the workman was entitled for the said basic and SPRA of Rs.342.57 per day from 01.07.2001 in view of NCWA-VII, the party No.1 reduced his basic from Rs.263.69 to Rs.129.79 per day and stopped the payment of SPRA w.e.f. 01.08.2001.

It is also pleaded by the union on behalf of the workman that the workman was examined by the Medical Board and according to the recommendations of the Medical Board, the Superintendent of Mines/Manager, Mahakali Colliery issued office order dated 02.09.2002 and transferred him from loader 's job to water supply section of the colliery to work as a pump khalasi as alternate surface duty and such transfer was done due to exigency, vacancy and requirement, in accordance with the provisions of manpower budget and as per office order No. 147 dated 24.02.2003, the Superintendent of Mines/Manager, Mahakali Colliery converted 36 piece rated loaders including the workman to time rated categories with different designations and the workman was also kept on probation for a year and his wages was fixed at midpoint of category II and the workman and the union approached the party No.1 against the reduction of the wages of the workman and to protect his basic and SPRA in writing and also personally, repeatedly, but party No.1 even did not care to reply to their approach and the action of the party No.1 is arbitrary, discriminatory and not reasonable and party No.1 had given wage protection to number of piece rated loaders on their conversion to time rated categories due to their ill health like that of the workman and the reduction of the wages of the workman is in contravention of the certified standing order and is illegal and the workman is entitled for protection of his wages of loader group V-A w.e.f. 01.08.2001and all consequential benefits including revision of his basic and SPRA in terms of NCWA –VII.

3. The party No.1 in the written statement has pleaded inter alia that the union has not filed on record any document indicating that the workman was its bona-fide member and his case is supported and espoused by it as required under Section 2(k) of the Act and the reference suffers from basic requirement of industrial dispute and on this ground, the reference is not maintainable and as at the time of raising of the dispute by the union before the ALC and so also, at the time of making the reference by the Central Government, the workman was not a loader, but he was a time rated employee, the terms of reference on this count are factually incorrect and the reference is not proper.

It is further pleaded by the party No.1 that the workman was appointed in its service as a piece rated loader in group V-A w.e.f. 25.12.1989 and the workman got injured on 27.07.2000, while he was on duty and its Apex Medical Board examined the workman and assessed his PPD at 12% and recommended his case for alternate surface duty and accordingly, surface duty was assigned to him w.e.f. 17.06.2001 and the workman was also paid compensation amount of Rs.26520.28 in the month of July, 2001 and even though, surface duty was assigned to the workman, in the midst of the same, he requested in writing to assign him the job of pump khalashi, which was to be vacant in the month of September, 2002 due to retirement of one Shri Ram Murat Suraj, who was the occupant of the said post, on the ground of his facing difficulties in performing the surface job given to him and on consideration of the request of the workman, he was given the duty of the pump khalashi at Mahakali Colliery w.e.f. 23.02.2003 and the said post comes under time rated category and therefore, he was placed in category- II vide letter No.5147 and the workman happily accepted the same and never disputed anything at that point of time and in view of the change of category and post, the wages of the workman was fixed in the changed category and post and accordingly, he was given all the benefits in the subsequent period treating him in category –II w.e.f. 23.02.2003.

Party No.1 has further peladed that the settlement dated 02.11.1992 stood modified w.e.f. 31.10.1995 and the same is in force since then without being challenged or declared legally void and the changes in the wages of the workman came to be correctly made as per Rules, since he was working in a lower category and the change of the workman from piece rated loader to time rated category was not on administrative ground, but due to the fact that the workman was not able to perform his job as a loader and opted for time rated and therefore, the workman is not entitled for any relief.

4. In the rejoinder, it is pleaded by the union on behalf of the workman that the Party No. 1 has raised frivolous technical points regarding the maintainability of the reference only to delay and defeat the claim of the workman and such technical objections cannot be entertained, in view of the Rulings of the Hon'ble Apex Court given in different judgments and the Central Government has referred the industrial dispute for adjudication and as such, the same is to be adjudicated by the Tribunal and there is no recognized union in WCL and as per law, when there is no recognized union, every registered union enjoys similar status and can raised industrial dispute and Party No. 1 has settled number of cases with the union before the ALC (C), Chandrapur and it is competent to raise the dispute on behalf of the workman. The union has also reiterated the facts regarding sustaining of injuries by the workman while on duty, his examination by the Medical Board to assess his disability and giving of light work to the workman by Party No. 1 as per the recommendation of the Medical Board and the entitlement of the workman for protection of his wages etc.

5. In order to prove the claim, the union has examined the workman as a witness. One Shri Shrikrishna S. Shelke, the Senior Personnel Manager of Rayatwari Sub Area has been examined as a witness by Party No. 1. Both the parties have relied on documentary evidence as well.

The workman so also the witness for Party No. 1 in their respective examination in-chief, which is on affidavit

have reiterated the facts mentioned in the statement of claim and in the written statement respectively.

In his cross-examination, the workman has admitted that the copy of the letter filed by the management as annexure-A (Ext.M-III) is the copy of his letter submitted to the Superintendent of Mines/Manager, Mahakali Colliery.

The witness for Party No. 1 in paragraph 2 of his affidavit has stated that the workman was deployed in TR category on the basis of recommendations of the Medical Board. In his cross-examination, also, the witness for the party No.1 has stated that after medical examination by the Apex Medical Board, the permanent disability of the workman was assessed at 12% and the Medical Board had recommended to give the workman alternate surface duty and there is no piece rated duty on surface of the coal mine.

It is to be mentioned here that in paragraph 6 of the written statement also, the Party No. 1 has mentioned that based on the recommendation of the Medical Board, alternate surface duty was assigned to the workman.

It is to be mentioned further that in view of the stands taken by the parties in the statement of claim and written statement, there is no need to discuss the oral evidence of the witnesses in detail.

6. In this case all most all the facts pleaded in the statement of claim have been admitted by the Party No. 1. The Party No. 1 has pleaded that the workman is not entitled to protection of his wages, as his placement in the post of khalashi was made by it, in response to the request of the workman himself and the provision of protection of wages as mentioned in the settlement dated 02.11.1992 was not applicable to his case and the fixation of wages of the workman at midpoint of time rated category was made as per the policy decision of the Party No.1.

7. At the time of argument, it was submitted by the learned advocate for the Party No. 1 that this dispute is not an industrial dispute and the union has no backing of any member at Chandrapur and the workman is not a member of the union and there is no community of interest and the dispute is purely an individual dispute. It was further submitted by the learned advocate for the Party No. 1 that the posting of the workman as khalashi was as per his request and his wages was fixed at midpoint of time rate category in accordance with the policy decision of the company's modified settlement arrived at by an agreement dated 31.10.1995 and such facts have been proved beyond doubt from the evidence on record including Ext. M-III and such fixation of wages of the workman is just and fair and the workman is not entitled to any relief.

8. Per contra, it was submitted by the learned advocate for the workman that the evidence on record clearly shows that the conversion of the workman from loader to time rated job was as per the recommendation of the Medical Board of Party No. 1 and not on the request of the workman and the workman is entitled for protection of his wages as per the settlement dated 02.11.1992, Ext. W-III and the union is entitled to raise the dispute and the dispute is an industrial dispute and the workman is entitled for the reliefs as claimed.

9. It is to be mentioned here that learned advocate for the workman has referred to one award passed by this Tribunal in support of his submissions. However, it is to be mentioned that the present reference is to be considered and decided on the facts and circumstances of this case and the evidence on record and not on the basis of the findings given in other case, basing on the respective facts and circumstances and evidence on record of the said case.

10. On perusal of the materials on record, it is found that the union is entitled to espouse the dispute on behalf of the workman. From the letter of reference made by the Central Government, it is found that the dispute was raised by the union before the conciliation officer and on failure of the conciliation, the reference has been made for adjudication to this Tribunal and the union has been directed to file the statement of claim and relevant documents in support of the claim. It is also found from the pleading of the parties and the materials on record that the dispute raised by the union is an industrial dispute.

11. From the pleadings of the parties and the evidence on record, it is clear that the workman was injured while on duty in the colliery and he was examined by the Medical Board and the Medical Board on examination found him unfit to work as a loader, but found him fit to do light work and recommended to give him alternate duty and on the basis of such recommendation, the workman was given alternate work on surface. It is also found from record that the workman as per Ext. M-III, requested the party No.1 to post him as a khalashi in the water supply section as he was facing difficulty in doing the alternate work of tying tarpoline over the dumpers due to the disability sustained by him and considering his request, party No.1 posted him as a khalashi. Moreover, it is found from the pleadings of the parties, the documents on record and the evidence of the witness of the party no.1 that the workman was already given alternate work on surface as per the recommendation of the Medical Board much prior to submission of Ext. M-III by the workman. So, it is clear from the record that the conversion of the work from piece rated to time rated by the party no.1 on the recommendation of the Medical Board and not on the request of the workman.

12. For better appreciation, I think it proper to mention paragraphs 1(i) to 1(iii) of the settlement dated 02.11.1992. The same are as follows:-

1.1 Demand no.1(i) :

That the management shall provide alternate/light job to the employees particularly loaders who are physically weak due to their old age, sickness or I.O.D. irrespective of vacancies.

1.2 Demand no. 1(ii) :

That the management shall fill up 50% vacancies arising out of natural wastage in Time Rated and monthly Rated category/grade from amongst the piece rated workers who have completed at least 15 years of service.

1.3 Demand no. 1(iii) :

That the management shall on conversion from P.R. to TR/MR will fully protect the group wages including SPRA wherever applicable. The basic pay so fixed in the TR/MR category/grade if exceeds the maximum of the category/grade, the balance will be treated as personal pay to the person concerned which shall be adjusted in the subsequent revision of pay/promotion. This decision shall be effective from 01.01.1992. It is also agreed that the cases already converted between 14.11.1990 to 31.12.1991 shall be considered for notional fixation only and earlier cases not be considered.

13. On perusal of the settlement dated 02.11.1992, it is found that in para 1(iii), the party no.1 has agreed to protect the wages of the loaders converted to time rated or monthly rated. There is no specification in that paragraph that the same will apply only to cases covered under para 1(ii). On plain reading of the paragraphs 1(i) to 1(iii), it is found that there is nothing in the same to show that para 1(iii) has no application to the cases of para 1(i), directly or by implication. Hence, I find no force in the submission made by the learned advocate in that respect.

14. So far the modified settlement dated 31.10.1995 is concerned, on perusal of the same, it is found that the same is not a settlement at all and the same is only the record note of discussion held between the management of WCL and RKKMS on 31.10.1995. The said so called settlement has no legal sanctity and cannot be said to be a legal settlement at all.

Moreover, in the said record note of discussion also in para 5, provision has been made to protect the wages of the loader converted to time rated or monthly rated category under certain circumstances. para 5 of the said record note read as follow:-

"Such piece rated workman who may put in time rated/ monthly rated in future by managerial decisions i.e. without seeking option from time rated/monthly rated or without going through the selection process against internal notification from time rated/monthly rated, will continue to get protection of piece rated wages such piece rated workmen who came to TR as per option given by them will not get this benefit."

As in this case, it is already held that the workman did not give any option for his conversion and the conversion was made by party no.1 on the recommendation of its Medical Board and the same is a managerial decision, the workman is entitled for protection of the basic wages and SPRA of loader. Hence, it is ordered:-

ORDER

The action of the management in relation to Mahakali Colliery of WCL in reducing the pay from Rs. 203.69 day and allowances in group V-A of loader paid in July, 2001 to Rs. 129.79 per day and allowances in Cat.-II w.e.f. 01.08.2001 in respect of Shri Mohindranath Roy, Loader, Mahakali Colliery, WCL is illegal and unjustified.The workman is entitled for protection of his basic wages and SPRA of piece rated loader w.e.f. 01.08.2001 and all consequential benefits arising out of such wage protection.

J. P. CHAND, Presiding Officer

नई दिल्ली, 26 मई, 2014

का.आ. 1622.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 05/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/5/2014 को प्राप्त हुआ था।

[सं. एल-22012/257/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डैस्क अधिकारी

New Delhi, the 26th May, 2014

S.O. 1622.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Limited, and their workmen, received by the Central Government on 26/05/2014.

[No. L-22012/257/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/05/2007 Date: 24.04.2014.

Party No. 1 : The Sub Area Manager,
Saoner Sub Area of WCL
Tah. Saoner, Distt. Nagpur

Versus

Party No. 2 : Shri Deorao Baburao Dhurve
R/o. Qr. No. 144, New Hutment Colony,
PO & Tah.-Saoner, Distt. Nagpur.

AWARD

(Dated: 24thApril, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Deorao Baburao Dhurve, for adjudication, as per letter No.L-22012/257/2006-IR (CM-II) dated 18.01.2007, with the following schedule:-

"Whether the action of the management of WCL in terminating the services of Shri Deorao Baburao Dhurve w.e.f. 27.07.2000 is legal and justified? If not, to what relief is the workman entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Deorao Baburao Dhurve, ("the workman" in short) filed the statement of claim and the management of WCL, ("party no.1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he was appointed as a labourer in Saoner Sub-Area of party no.1 on 04.04.1990 and he worked with sincerity to the satisfaction of the authority and due to some family problems, he was unable to attend his duties for two months and for that, the party no.1 issued a charge sheet against him, under clause 26.30 of the Standing Order, for unauthorized absence from duty and on bare perusal of the charge sheet and the records of the inquiry, it can be found that the inquiry was a sham enquiry and fraud was perpetrated by the enquiry officer and the enquiry officer acted as a mere stooge for the party no.1, without showing any respect to the quasi judicial duties entrusted to him and the equiry report submitted by the enquiry officer on the fact of the record is replete with blatant falsehood and no semblance of an opportunity, much less adequate and effective opportunity was given to him to demonstrate his innocence and he was not given any opportunity to defend his case and the entire enquiry was conducted behind his back and for obvious reasons, a copy of proceedings was not forwarded to him and the instant case presents a sordid picture of management's arbitrariness and exploitation, only because, he was the representative of the employees and every time he had come out with proper demands of the employees and the order of his dismissal from services dated 25.07.2002 is bad in law being breach of section 78 of Industrial Relations Act, 1946 and the said order was passed in respect of his unauthorized absence from duty and the conclusions reached by the enquiry officer are perverse and the findings are based on no evidence and the enquiry officer did not discuss and assess the evidence of the witness and the perversity of the findings renders the order of dismissal as illegal and the same amounts to victimization on account of the union activities carried on by him.

It is further pleaded by the workman that the dismissal order was approved by the Chief Manager, WCL, Saoner Area, who was the Appellate Authority, under clause 30 of the Standing Order and therefore, his right of appeal was forfeited and the enquiry as conducted was nothing but a farce.

The workman has prayed for his reinstatement in service with continuity, full back wages and all other consequential benefits.

3. The party no.1 in the written statement has pleaded inter-alia that the reference has been made belatedly, as the workman came to be dismissed on 25.07.2000 and the workman for the first time approached the Labour Commissioner on 05.12.2005, after a lapse of more than 4 years and in view of the failure of the conciliation proceedings, the reference was made to the Tribunal in 2007, however, the workman took almost four years to file the statement of claim and the conduct of the workman demonstrates that he is not at all interested in doing the job and hence, the reference is liable to be answered in the negative on the ground of delay and latches and during his service tenure also, the workman was not interested in performing his duties and constantly remaining absent without any intimation to the management and the workman was appointed on 04.04.1990. as a General Mazdoor and since the date of his appointment, he was not keen in performing his duties and was remaining absent and on 05.12.1991, a charge sheet was issued against the workman for remaining absent and vide letter dated 11.12.1993, he was issued with a warning and as the workman did not improve his conduct of remaining absent, another charge sheet dated 28.01.1994 was issued against him, which was culminated by imposing the punishment of deduction of one day wages and strict warning and in similar manner, the workman was issued with warning letters dated 11.03.1994, 10.05.1994 and 23.07.1994, for remaining absent continuously and unauthorisedly and as the workman again remained unauthorized absent, it was constrained to issue the charge sheet dated 31.01.1995 and the same was culminated by imposing punishment of stoppage of one increment with cumulative effect and inspite of the same, the workman did not improve his conduct, so another warning letter dated 20.05.1995 was issued against him and on 24.02.1998, another charge sheet was submitted against the workman for remaining unauthorized absent and the enquiry conducted against him culminated by order dated 04.11.1998 by imposing punishment of stoppage of one increment with cumulative effect.

It is further pleaded by party no.1 that inspite of imposition of various kind of punishments upon the workman and inspite of strict warnings given to him from

time to time, the workman did not attend his duties for 64 days in the year 1999 and he also did not attend his duties for a single day up to June, 2010, so, the workman was issued with the charge sheet dated 08/10.01.2000, which was self explanatory and the workman did not reply to the charge sheet, so it had left with no alternative, but to initiate the departmental enquiry and the workman on the first date of the enquiry itself i.e. on 14.04.2000, admitted the charges levelled against him, so the enquiry officer concluded the enquiry on 14.04.2000 itself and all the allegations made against the enquiry and enquiry officer are totally after thought and baseless and management had given fair opportunity to the workman, however, the workman himself having admitted the charges was not at all interested in further enquiry and there could not have been any further enquiry and after taking into consideration the aforesaid facts, the management was constrained to dismiss the workman and the order of dismissal was not approved by the Chief General Manager, but the same was confirmed by the Sub-Area Manager, who was the appointing authority and the workman could have filed the appeal before the Chief General Manager and the workman did not file any appeal and he has tried to gain the sympathy of the Tribunal by making false pleas and after conclusion of the enquiry, the copy of the enquiry report, proceedings and other documents were supplied to the workman on 25.06.2000 and in response to the same, the workman by his letter dated 27.06.2000 once again admitted the charges levelled against him and pleaded sympathy and second show cause notice dated 29/30.06.2000 was issued to the workman and in his reply dated 02.07.2000 to the second show cause notice, the workman once again admitted the charges levelled against him and pleaded sympathy and by taking into consideration all the facts, the order of dismissal dated 25.07.2000 was passed by it and the workman is not entitled to any relief.

4. As this is a case of termination of the services of the workman as a punishment in the departmental enquiry held against him, the fairness or otherwise of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 10.02.2014, the departmental enquiry held against the workman was held to be legal, proper and in accordance with the principles of justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that the Enquiry Officer acted only as a mere stooge of the management and the enquiry report on the face of the record is replete with blatant falsehood and no semblance of opportunity much less adequate and effective opportunity was given to the workman to demonstrate his innocence and the conclusions drawn by the Enquiry Officer are perverse and the findings are based on no evidence and the perversity of the findings renders the order of dismissal as illegal and the same amounts to victimization, on account of union activities carried n by the workman and the dismissal order was approved by the Chief General Manager, Saoner Area of WCL, who is the appellate authority, as declared under clause 30 of the Certified Standing Order and due to approval of the order of punishment by the appellate authority, the workman's right to appeal was forfeited and as such, the workman is entitled for reinstatement in service with full back wages and all other consequence benefits.

6. Per contra, it was submitted by the learned advocate for the party No.1 that by order dated 10.02.2014, it has already been held by this Tribunal that the departmental enquiry held against the workman to be fair, legal and in accordance with the principles of natural justice and the reference is liable to be answered in the negative due to the delay and latches in raising the dispute by the workman and the workman was dismissed on 25.07.2000 and after a period of about more than 5 years, the workman approached the Assistant Labour Commissioner(central), Nagpur for conciliation for the first time on 05.12,2005 and the reference was made to the Tribunal in 2007, after a period of seven years from the date of dismissal and from the materials on record, it is clear that the workman is responsible for the delay and though, the reference was made in 2007, the workman filed the statement of claim only on 17.03.2011.

It was further submitted by the learned advocate for the party No.1 that within a period of 18 months from the date of his appointment on 04.04.1990, the workman started remaining unauthorized absent from duty from time to time, for which several charge sheets were submitted against him and he was inflicted with punishments of warning, deduction of wages and withholding of increments with cumulative effect, but still then, the workman did not change his attitude of remaining unauthorized absent and party No.1 noticing the workman to have attended duty only for 64 days in 1999, issued charge sheet dated 08/10.01.2000 for remaining unauthorized absent and in the said charge sheet, there was mention about issuance of the earlier charge sheets and inspite of receipt of the charge sheet, the workman did not attend duty for a single day till June, 2000 and the workman also did not submit his reply to the charge sheet and in the first sitting of the departmental enquiry on 14.04.2000, the workman admitted the charges levelled against him and in view of the admission of the charges by the workman, the Enquiry Officer concluded the enquiry and the workman in the entire statement of claim filed by him has not pleaded as to how the findings of the Enquiry Officer are perverse and the punishment imposed against the workman cannot be said to be shockingly disproportionate and there is no scope to interfere with the punishment and the workman is not entitled for any relief.

In support of the submissions, the learned advocate for the party No.1 placed reliance on the decisions reported in (2008) I SCC-224(L & T Kamastu Vs. N. Uday Kumar).

7. Before delving into the merit of the matter, at the cost of repetition, it is to be mentioned that by order dated 10.02.2014,the departmental enquiry conducted against the workman has already been held to be legal, proper and in accordance with the principles of natural justice. So, the submissions made by the learned advocate for the workman in regard to the fairness or otherwise of the departmental enquiry cannot be considered again.

8. The first contention raised by the learned advocate for the party No.1 is to answer the reference in the negative due to delay in raising the dispute by the workman. Admittedly, the workman was terminated from services on 27.07.2000 and he raised the dispute in the year 2005, before the Assistant Labour Commissioner(central), Nagpur and there was a delay of about five years. However, it is well settled by the principles enunciated by the Hon'ble Apex Court in a number of decisions that, "Merely, because the Act does not provide a limitation for raising a dispute, it does not mean that the dispute can be raised at any time without regard to the delay and reasons there for. It is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available."

However, delay in the present case has not been so culpable as to disentitle the workman to any relief. Hence, it is not possible to accept the submission raised by the learned advocate for the party No.1 that on account of delay and latches in raising the dispute by the workman, the reference is liable to be answered in the negative.

9. It was submitted by the learned advocate for the workman that the conclusions reached by the Enquiry Officer are perverse and the said findings are based on no evidence and the perversity of the findings renders the order of dismissal as illegal and amounts to victimization.

It is well settled that in a case where there is no defect in the procedure in the course of a domestic enquiry in to the charges for misconduct against the employee, the Tribunal can interfere with an order of dismissal, only where the findings are perverse or where there is no prima facie case. In such a case, the Tribunal does not sit as a court of appeal, weighing or re-appreciating the evidence itself, but only examines the finding of the Enquiry Officer on the evidence in the domestic enquiry as it is.

Judging the present case in hand with the touch stone of the principles as mentioned above, it is found that the findings of the enquiry officer are not perverse. It is clear from the materials on record that the workman attended the departmental enquiry and voluntarily admitted the charges levelled against him. On the basis of the own admission of the workman, the Enquiry Officer held the workman guilty of the charges levelled against him. Hence, it cannot be said that the findings of the Enquiry Officer are based on no evidence or they are perverse.

10. So far the proportionality of the punishment is concerned, it is found that grave misconduct of unauthorized absent from duty has been proved against the workman in a properly conducted departmental enquiry. It is also found that the workman had been found guilty of unauthorized absent several times. Applying the principles enunciated by the Hon'ble Apex Court in (2008) SCC-224(supra) to the case in hand, it is found that the punishment of dismissal of the workman from services cannot be said to be harsh or shockingly disproportionate.

11. It was submitted by the learned advocate for the workman that the dismissal order was approved by the appellate authority, the Chief General Manager and thereby, the workman lost the scope of appeal. However, on perusal of the approval order of punishment, it is found that the same was approved by the Sub Area Manager, Saoner and not by the Chief General Manager as submitted. Hence, there is no force in the submission made by the learned advocate for the workman on that score.

12. In view of the discussion made above and the materials on record, it is found that there is no scope to interfere with the order punishment of dismissal from services past against the workman. Hence, it is ordered:—

ORDER

The action of the management of WCL in terminating the services of Shri Deorao Baburao Dhurve w.e.f. 27.07.2000 is legal and justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 26 मई, 2014

का.आ. 1623.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 10/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/5/2014 को प्राप्त हुआ था।

[सं. एल-22012/261/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डैस्क अधिकारी

New Delhi, the 26th May, 2014

S.O. 1623.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur

as shown in the Annexure, in the industrial dispute between the management of WCL, and their workmen, received by the Central Government on 26/05/2014.

[No. L-22012/261/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/10/2007 Date : 25.04.2014

Party No. 1 : The Chief General Manager, WCL, Pench Area, Po:Parsia, Chhindwara (MP).

Versus

Party No. 2 : The General Secretary, Sanyukta Koyla Mazdoor Sangh, (AITUC), Central Office Iklehra, Pench Kanhan Area, Chhindwara (MP).

AWARD

(Dated: 25th April, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Sarwan, for adjudication, as per letter No. L-22012/261/2006-IR (CM-II) dated 18.01.2007, with the following schedule:-

> "Whether the action of the management of M/s. WCL in dismissing Shri Sarwan from services w.e.f. 20.12.2004 is legal and justified? If not, to what relief is the workman entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Sarwan, ("the workman" in short) through his union, "Sanyukta Koyla Mazdoor Sangh, (AITUC)", ("the union" in short) filed the statement of claim and the management of WCL, ("party no.1" in short) filed the written statement.

The case of the workman as presented by the union in the statement of claim is that the workman was working in Bishnupuri no. 2 colliery and on 24.01.2003, a false charge sheet was submitted against him by the party no.1 and the workman submitted his reply to the charge sheet within the stipulated time limit and as the workman became ill, he was not able to attend duties and he sent information about his illness to the party no.1 and the workman was treated at the colliery hospital from 10.02.2003 and he was declared fit to resume his duties w.e.f. 04.03.2003 and in the medical certificate it was mentioned that the workman had remained absent from 27.12.2003 and as the workman had given prior intimation to the party no.1 about the reason of his remaining absence by registered post, the submission of the charge sheet against him was without any basis and after working for two to three days, the workman again suffered from mental illness and could not able to join his duties and the family members of the workman duly intimated about the mental illness of the workman to party no.1 by registered post and Dr. C.A. Tiwari declared the workman fit to resume duties by issuing the medical certificate and the workman joined duties and worked for some days, after which, he again suffered from mental illness and therefore remained absent from duties and after treatment, Dr. C.A. Tiwari declared the workman fit to resume duties by issuing the medical certificate and the workman submitted an application to the party no.1 alongwith the medical certificate to allow him to resume duties, but party no.1 did not allow him to resume duties and proceeded with the departmental enquiry on the charge sheet dated 24.01.2003 and the workman attended the departmental enquiry with his coworker and put forth his defence before the enquiry officer, but the enquiry officer did not consider at all the submission made by the workman and his coworker and party no.1 was predetermined to terminate the workman from services, by hook or crook and in the charge sheet, allegation was made against the workman that he remained absent from 27.12.2002 and in support of his absence, the workman had produced the seek certificate issued by the colliery doctor and he had been allowed to resume duty w.e.f. 04.03.2003 and from such facts, it is clear that the workman never remained absent and whenever he had remained absent, he had intimated about the same to the party no.1 and therefore, there was no question of conducting the departmental enquiry against the workman and the workman was terminated from services illegally and in breach of the principles of natural justice and the workman is entitled for reinstatement in service with continuity and full back wages.

3. The party no.1 in the written statement has pleaded inter-alia that the workman was working as DPR and he was a habitual absentee and he remained absent from duty unauthorisedly without intimation, permission or sanctioned leave, hence he was issued with the charge sheet dated 24.01.2003 for the misconduct of remaining unauthorisedly absent from duty with effect from 27.12.2002 and the said charge sheet was sent to the workman by registered A.D. Post and as no satisfactory reply was received from the workman, the departmental enquiry was ordered and vide Order dated 08.07.2003, Shri P.K. Singh was appointed as the enquiry officer and the workman attended the enquiry on 17.07.2003 and requested the enquiry officer for time to bring his coworker and the enquiry was adjourned to 02.08.2003 and on 02.08.2003, the workman asked for further time to produce treatment paper and the enquiry officer adjourned the

enquiry to 07.08.2003 and vide order dated 09.02.2004, Shri Manoj Kumar, Assistant Manager was appointed as the enquiry officer and the enquiry officer fixed the case to 15.04.2003 with due intimation to the workman, but as on 15.04.2003, the workman neither attended the enquiry nor intimated anything about the reason of his absence, the enquiry officer proceeded with the enquiry ex parte and after taking evidence and closure of the enquiry, the enquiry officer submitted his report to the competent authority, holding the workman guilty of the charges and the competent authority being satisfied about the fairness of the departmental enquiry, issued the show cause notice alongwith the copy of the enquiry report to the workman by registered post with AD and as no satisfactory reply was received from the workman, the competent authority after taking into consideration the seriousness of the misconduct proved against the workman, vide order dated 18.12.2004 passed the order of termination of the workman from services and its action in terminating the services of the workman is just and proper and the workman is not entitled to any relief.

4. In the rejoinder, it is pleaded by the union that the workman was not a habitual absentee and the workman did not receive any document of the departmental enquiry including the charge sheet and the enquiry conducted against the workman was illegal and in breach of the principles of natural justice.

5. As this is a case of termination of the services of the workman after holding of a departmental enquiry against him, the fairness or otherwise of the departmental enquiry was taken up as a preliminary issue for consideration and by order dated 28.11.2013, the enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

6. At the time of argument,it was submitted by the union representative that as the charge sheet was not received by the workman, he did not submit his reply to the same and in clause 28.1 of the Standing Order, it is clearly mentioned that a departmental proceeding cannot be initiated, unless and until the charge sheet is served on the workman and the workman submitted his reply to the same and the entire departmental enquiry conducted against the workman is illegal and the report submitted by the Enquiry Officer is actually not an Enquiry report, as in the same, it has been mentioned that the Enquiry Officer himself and the management representative were absent on 15.04.2004 and if the enquiry Officer and the Management representative were absent, then how it was possible to conduct the departmental enquiry on 15.04.2004 and as such, the enquiry is illegal and concocted and the workman is entitled for reinstatement in service with continuity, full back wages and all consequential benefits.

It is necessary to mention here that no argument was made on behalf of the Party No. 1.

7. The argument advanced by the Union representative is almost regarding the fairness of the enquiry. At the cost of repetition, it is necessary to be mentioned here that by order dated 28.11.2013, it has already been held that the departmental enquiry conducted against the workman is valid and in accordance with the principles of natural justice. Hence, there is no scope to consider again the submission made by the Union representative regarding the fairness of the enquiry.

So far the contention regarding the report submitted by the Enquiry Officer mentioning about the absence of himself and the Management representative on 15.04.2004 is concerned, on perusal of the enquiry report, it is found that the submission made by the Union representative in that regard is not at all true and the same has no force.

8. Before delving into the merit of the matter, I think it necessary to mention the principles envisaged by the Hon'ble Apex Court in different judgments in regard to the jurisdiction and power of the Tribunal to interfere with the findings in a departmental enquiry and punishment imposed against the delinquent workman.

> "It is well settled that departmental enquiry is not based by strict rules of Evidence Act, but by fair play and natural justice and only total absence, but not sufficiency of evidence before Tribunal is ground for interference by court. It is also well settled that interference with the finding of fact in a departmental enquiry is permissible, only when, there is no material for the said conclusion or that on the materials, the conclusion cannot be that of a reasonable man.

A finding recorded in a domestic enquiry cannot be characterized as perverse by the Labour Court, unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of evidence adduced. In a domestic enquiry, once a conclusion is deducted from the evidence, it is not permissible to assail the conclusion even though, it is possible for some other authority to arrive at a different conclusion on the same evidence.

The jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of Legislature or rules made under the proviso of Article 309 or the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can be lawfully imposed and is

imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

So, keeping in view the principles as mentioned above, now, the present case in hand is to be considered.

9. On perusal of the materials on record, it is found that this is not a case of no evidence or that on the materials, the conclusion drawn by the enquiry officer cannot be that of a reasonable man. The findings given by the enquiry officer are based on the materials available on the record of the departmental enquiry. The enquiry officer has analyzed the evidence in a rational manner and has assigned cogent reasons in support of his findings. Hence, the findings of the enquiry officer cannot be said to be perverse.

10. So far the proportionality of the punishment is concerned, serious misconduct of unauthorized absence from duty for a long period and habitual absenteeism has been proved against the workman in a properly conducted departmental enquiry. Hence, the punishment of dismissal from services imposed against the workman cannot be said to be disproportionate. In view of the discussions made above,it is found that there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:

ORDER

The action of the management of M/s. WCL in dismissing Shri Sarwan from services w.e.f. 20.12.2004 is legal and justified.The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 26 मई, 2014

का.आ. 1624.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 24/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/5/2014 को प्राप्त हुआ था।

[सं. एल-22012/165/2004-आईआर (सीएम-II)]

बी. एम. पटनायक, डैस्क अधिकारी

New Delhi, the 26th May, 2014

S.O. 1624.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Hindustan Lalpeth U/G Sub Area of WCL, and their workmen, received by the Central Government on 26/05/2014.

[No. L-22012/165/2004-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/24/2005 Date : 22.04.2014.

Party No. 1 : The Sub Area Manager,
Hindustan Lalpeth U/G Sub Area of WCL,
Post: Lalpeth,
Tah & Distt. Chandrapur (MS).

Versus

Party No. 2 : Shri Lomesh M. Khartad,
General Secretary,
Rashtriya Colliery Mazdoor Congress,
Dr. Ambedkar Nagar
PO & Tah. Ballarpur,
Distt. Chandrapur. (MS)

Workman : Rajaram Bakalu Nakka (Dead)
Substituted by :

(1) Durgabai Rajaram Nakka (Wife)
(2) Bakalu Balaiyya Nakka (father)
(3) Shankar Bakalu Nakka (younger brother)

AWARD

(Dated : 22nd April, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Rajaram Bakalu Nakka, for adjudication, as per letter No.L-22012/165/2004-IR (CM-II) dated 30.03.2005, with the following schedule:-

> "Whether the action of the management in relation to Hindustan Lalpeth U/G Sub Area of WCL in terminating the services of Shri Rajaram Bakalu Nakka, Coal Filler, Mana Incline, Chandrapur Area vide Office Order no. WCL/CHA/HLUGSAM/M.I./SOM/PER/1406 dated 04/05.05.2001 is legal and justified? If not, to what relief is the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, the Rashtriya Colliery Mazdoor Congress, ("the union" in short) filed the statement of claim on behalf of the workman,Shri Rajaram Nakka, ("the workman" in short) and the management of Hindustan Lalpeth under Ground Sub Area of Western Coalfields Limited ("party no.1" in short) filed the written statement.

The case of the workman as presented in the statement of claim by the union is that it is a registered trade union under the Trade Unions Act, 1926 and the party no.1 is a government company and is a "State" within the meaning of Article 12 of the Constitution of India and the workman was appointed as a piece rated loader at Hindustan Lalpeth Mine no.3 w.e.f. 08.01.1992 and the workman put unblemished service and party no.1 issued a charge sheet dated 02.05.1999 against the workman, for absenteeism from duty from 12.04.1999 and there were several serious infirmities in the said charge sheet and the workman replied to the charge sheet, vide his letter dated 04.05.1999, in which, it was explained by him that his absence was for genuine and satisfactory ground and for reason beyond his control and the notice of the enquiry dated 22.07.1999 fixing the enquiry to 06.08.1999 was issued to the workman and on 02.08.1999, the workman submitted a representation requesting to allow him to engage Shri S.S. Gedam as his co-worker in the enquiry, but party no.1 did not response to the same and after lapse of about more than one year, a notice was issued by party no.1 to the workman fixing the enquiry to 21.08.2000, which was received by the workman on 28.08.2000 and the workman visited the office and brought the said fact to the notice of the Enquiry Officer and the enquiry officer taking advantage of the situation and the simplicity and ignorance of the workman, tried to blackmail him and having not been successful, the Enquiry Officer took the signature of the workman on one pretext or the other and advised him not to go on duty on 01.09.2000, with the assurance of arranging for his attendance and payment of wages for that day and this fact was brought to the notice of the management and after a lapse of about 8 months of the so called enquiry, the Mines Manager, Mana Incline issued a letter dated 27/28.04.2001 enclosing therewith the copy of the report of the Enquiry Officer to the workman, asking him to submit his explanation within 72 hours of the receipt of the same and the said letter was received by the workman on 05.05.2001 and there were several infirmities in the said letter, but the workman submitted his explanation on 05.05.2001 under official receipt and party no.1 without application of mind and without verifying about the actual date of receipt of the notice dated 27/28.04.2001, mechanically dismissed the workman from service by order dated 04/05.05.2001 with immediate effect and the punishment was harsh and the same was predetermined and pre-decided and therefore was illegal and arbitrary and the so called enquiry proceedings and the enquiry report and the action taken on the same were also illegal and the order of dismissal was passed in utter disregard to the principles of natural justice and amounted to victimization and unfair labour practice and though several representations were made by it and the workman himself, for reinstatement of the workman in service with continuity and full back wages, the same did not yield any result.

It is further pleaded by the union on behalf of the workman that the workman appealed to the Chairman-cum-Managing Director, for his reinstatement vide his letter dated 29.06.2003, by registered post with AD and the same was received on 12.07.2003 in the office of the CMD and the workman also issued a reminder dated 16.08.2003, but party no.1 did not even acknowledge the receipt of the letters and the action of party no.1 was against the provisions of the standing order and the record of the departmental proceedings was manipulated to victimize the workman and the charge sheet was vague and the documents mentioned in the charge sheet were not supplied to the workman and there was violation of the principles of natural justice and the charges levelled against the workman were not proved in the enquiry and the punishment is too harsh and disproportionate.

Prayer has been made by the union to hold the action of the party no.1 as illegal and to set aside the same and to order for reinstatement of the workman in service with continuity, full back wages and all other consequential reliefs.

3. The party no.1 in the written statement has pleaded inter-alia that the workman was appointed on 08.01.1992 and he had not completed 190 days attendance in any calendar year till his termination on 05.05.2001 and prior to issuance of the charge sheet, he was issued with 11 warning letters to improve his attendance and the workman was served with charge sheet dated 13.04.1999 and on receipt of unsatisfactory explanation from the workman, a departmental enquiry was constituted and Shri D.K. Chandhok was appointed as the Enquiry Officer and the Enquiry Officer issued notice to the workman to attend the enquiry and the workman attended the enquiry and he was given sufficient opportunities to defend the case before the Enquiry Officer and in the enquiry proceedings, it was noted that the workman confessed and confirmed that due to illness, he was unable to attend duties, but he did not produce any material evidence in support of his claim of illness and the workman defended himself in the enquiry without the assistance of any worker and the attendance of the workman in 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999 and 2000 was 149 days, 147 days, 132 days,154 days, 125 days, 105 days, 155 days, 166 days and 154 days respectively and the workman was given eleven warning letters and from the above facts, it is clear that even after giving sufficient opportunities, the workman never improved his attendance and the action initiated by it was proper and justified and the workman is not entitled to any relief.

4. In the rejoinder, it is pleaded by the union on behalf of the workman that the workman was victimized in a preplanned manner and the entire enquiry proceedings from drawing the charge sheet to the imposition of the

punishment by way of dismissal and even thereafter, suffer from serious infirmities and party no.1 suppressed material documents, which were very much relevant to throw light on the issue and the figure of attendance of the workman as given in the written statement is concocted and manipulated.

5. It is necessary to mention here that during the pendency of the reference, the workman died, so the widow, father and younger brother of the workman, namely, Durga bai Rajaram Nakka, Bakula Balaiyya Nakka and Shankar Bakula Nakka respectively were substituted as the legal heirs of the deceased workman, as per order dated 03.04.2007.

6. As this is a case of dismissal of the workman from services, after holding of a departmental enquiry, the fairness or otherwise of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated07.02.2014, the enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of justice.

7. At the time of argument, it was submitted by the learned advocate for the petitioners that the Act is a social welfare legislation and it is well settled by the Hon'ble Apex Court that u/S 11-A of the Act, it is the duty of the Labour Court to consider all points raised before it and section 11- A empowers the Labour Court/Tribunal to appreciate evidence and further empowers to alter the same. It was further submitted by the learned advocate for the petitioners that the notice of the enquiry was served on the workman on 28.08.2000, though the enquiry was fixed on 21.08.2000 and there was violation of the provisions of clause 28.1 of the standing order and the Enquiry Officer has recommended the punishment as per Ext. M-VI and as such, the imposition of punishment upon the workman is illegal and it is clear from the report submitted by the Enquiry Officer that though the charge sheet was dated 02.05.1999, the Enquiry Officer out of prejudice, crossed his jurisdiction and took into consideration about the absence of the workman up to 2000 and the same shows his bias attitude and that he travelled beyond his jurisdiction and in the order of dismissal dated 04.05.2001, it has been mentioned that the charge sheet submitted against the workman was dated 31.04.2001 and such a charge sheet did not exist and in the said order, it was mentioned that the workman did not submit his reply to the charge sheet, even though, Ext. M-II, the document submitted by the party No.1 shows that the workman had in-fact submitted his reply on 04.05.1999 and as party No.1 suppressed the reply submitted by the workman, adverse inference has to be drawn against the party No.1 and the reply submitted by the workman was not considered, before passing of order for making inquiry and as such, the Enquiry was illegal.

It was further submitted by the learned advocate for the petitioners that the documents on record show that the second show cause notice was received by the workman on 05.05.2001 and he submitted his reply to the same on the same day, but the order of dismissal was passed on 04.05.2001 and served on the workman on 05.05.2001 and the above facts clearly show that the order of dismissal was passed before the service of the second show cause notice on the workman and there was violation of the principles of natural justice and the order of dismissal is liable to be quashed.

The learned advocate for the petitioners further submitted that the appeal filed by the workman was not disposed of within 45 days as per clause 30 of the certified standing order and the punishment is harsh and the workman was entitled for reinstatement in service with continuity and full back wages and as the workman has died, his widow is entitled to monetary benefits and benefits of Life cover Scheme as per the scheme of NCWA.

In support of the submissions, the learned advocate for the petitioners placed reliance on the decisions reported in 1970 II L.L. J.- 1 (The Management of Travancore Titanium Production Ltd. Vs Their workmen), 2009 LAB I C-3502(Tekchand vs. Himachal Pradesh Khadi & Village Board) and 2011 II L L J-627(SC) (Union of India Vs. S.K. Kapoor).

8. Per contra, it was submitted by the learned advocate for the party No.1 that it has already been held by this Tribunal by order dated 07.02.2014 that the departmental enquiry conducted against the workman to be legal, proper and in accordance with the principles of natural justice and almost all the submissions made by the learned advocate for the petitioners relate to the fairness of the enquiry and therefore the said submissions cannot be reconsidered again and the findings of the Enquiry Officer are based on the evidence on record of the enquiry and are not perverse and the punishment imposed is quite proportionate and is not shockingly disproportionate and there is no cope to interfere with the punishment and the petitioners are not entitled to any relief.

9. Perused the record. Most of the submissions made by the learned advocate for the petitioners relate to the fairness of the departmental enquiry, which has already been decided as a preliminary issue as per order dated 07.02.2014. The submissions made by the learned advocate for the petitioners that a welfare officer was examined as a witness by the party No.1 and as such, his evidence is to be excluded, that the notice of the enquiry was served on the workman on 28.08.2000, even though, the enquiry was fixed to 21.08.2000, copy of the document relied on by the party No.1 in the enquiry was not supplied to the workman, that the Enquiry Officer had recommended the punishment and that the enquiry against the workman was held in

regard to the charge sheet dated 30.04.1999 and not dated 02.05.1999 were already considered at the time of deciding of the preliminary issue of the fairness of the departmental enquiry, so there is no scope for reconsideration of such submissions again.

10. The learned advocate for the petitioners submitted that in Ext.M-VI,the note sheet dated 09.02.2001, the Enquiry Officer has recommended the punishment to be imposed against the workman. However, on perusal of Ext. M-VI, it is found that there is nothing in the same to show that any punishment was recommended by the Enquiry Officer. Hence, there is no force in the submission made by the learned advocate for the petitioners in that respect.

11. The next submission made by the learned advocate for the petitioners is regarding non-consideration of the explanation submitted by the workman to the charge sheet,by Party No. 1, before making order for the departmental enquiry. It was submitted that in the order of dismissal, Ext. M-VIII, it has been mentioned that the reply was not given by the workman and a departmental enquiry was ordered, which shows that the reply of the workman as per Ext. M-II was not considered by the Party No. 1. Admittedly, in Ext. M-VIII, it has been mentioned that no reply was submitted by the workman to the charge sheet. However, on perusal of the other documents relating to the departmental enquiry, it is found that inadvertently, such fact has been mentioned in Ext. M-VIII. In Ext. M-V, the enquiry report, it has been clearly mentioned that the reply submitted by the workman to the charge sheet was not found satisfactory and a domestic enquiry was ordered. Likewise, in Ext. M-VI, it has been mentioned that the explanation submitted by the workman to the charge sheet was not found satisfactory and therefore a departmental enquiry was ordered. So, it is clear from the materials on record that Party No. 1 had considered the reply submitted by the workman to the charge sheet dated 02.05.1999 and finding the same not to be satisfactory, ordered for the departmental enquiry.

12. The next contention raised by the learned advocate for the petitioners is that the second show cause notice was received by the workman on 05.05.2001and he submitted his reply to the same on the same day, but the order of dismissal was served on the workman on 05.05.2001 and it is clear that without consideration of the reply of the workman, the order of dismissal was passed and there was violation of the principles of natural justice. However, on perusal of the record, it is found that there is no legal evidence on record to show that the workman received the second show cause notice on 05.05.2001. Hence, I find no force in the contention raised by the learned advocate for the workman on that score.

13. It was submitted by the learned advocate for the petitioners that the appeal preferred by the workman was not disposed of by Party No. 1 within 45 days of filing of the appeal as per clause 30 of the Standing Order and as such, the punishment imposed against the workman is illegal. However, on perusal of the documents filed by the workman, it is found that the workman did not prefer any appeal before the designated Appellate Authority, i.e. General Manager/Chief General Manager within the prescribed time limit for filing of appeal. The letter dated 08.05.2001 alleged to be the appeal of the workman is addressed the Manager, Mana Incline, Hindustan Lalpeth Colliery, Chandrapur Area and not to the General Manager or Chief General Manager. The said letter was submitted by the workman for reconsideration of his case and to give him another chance to work in the colliery. There is no legal evidence on record to show that in fact any appeal was filed by the workman before the designated Appellate Authority, when the workman did not file any appeal before the Competent Appellate Authority within the time limit, the question of disposal of the same by the Appellate Authority within the time prescribed for the same does not arise.

14. In this case, the workman had admitted the charges of habitual absenteeism and remaining unauthorized absent. The workman had taken the plea that due to his illness, he had failed to attend duty. However, the workman had failed to produce any document in support of his illness. The workman failed to substantiate the plea of his illness. It is also found that the findings of the Enquiry Officer are based on the materials on record of the departmental enquiry and the same cannot be said to be perverse.

In view of the facts and circumstances of the case as mentioned above, with respect, I am of the view that the decisions cited by the learned advocate for the petitioners have no clear application to the present case in hand.

15. So far the proportionality of the punishment is concerned, grave misconducts of unauthorized absence from duty and habitual absenteeism had been proved against the workman in a properly conducted departmental enquiry. Hence, there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:-

ORDER

The action of the management in relation to Hindustan Lalpeth U/G Sub Area of WCL in terminating the services of Shri Rajaram Bakalu Nakka, Coal Filler, Mana Incline, Chandrapur Area vide Office Order No. WCL/CHA/HLUGSAM/M.I./SOM/PER/1406 dated 04/05.05.2001 is legal and justified. As the workman was not entitled to any relief, the petitioners are also not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 26 मई, 2014

का.आ. 1625.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 47/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/5/2014 को प्राप्त हुआ था।

[सं. एल-22012/90/2013-आईआर (सीएम-II)]

बी. एम. पटनायक, डैस्क अधिकारी

New Delhi, the 26th May, 2014

S.O. 1625.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of HLOC Sub Area, Chandrapur Area, and their workmen, received by the Central Government on 26/05/2014.

[No. L-22012/90/2013-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/47/2013 Date: 17.04.2014

Party No. 1 : The Sub Area Manager,
HLOC Sub Area, Chandrapur Area,
WCL Post Office-Lalpeth,
Distt. Chandrapur (M.S.)

Versus

Party No. 2 : The General Secretary,
Rashtria Colliery Mazdoor Congress,
Dr. Ambedkar Ward, Ballarpur,
Dist. Chandrapur (M.S.)

AWARD

(Dated: 17th April, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of HLOC Sub Area, Chandrapur Area and the applicant, Shri Pramod, the dependent son of Shri P.G. Kajliwale for adjudication, as per letter No.L-22012/90/2013-IR (CM-II) dated 21.08.2013, with the following schedule:-

"Whether the action of the management of HLOC Sub Area of Chandrapur Area of Western Coalfields Limited in denying employment to Shri Pramod Prakash Kajliwale, the dependant son of Shri P.G. Kajliwale who has already put in more than 36 years of service, which is contrary to the provisions of para 9.4.4 of NCWA is legal & justified? If not, to what relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due.

Inspite of sufficient service of the notice, the petitioner neither appeared nor filed any statement of claim. The party No.1 appeared through their advocates on 27.01.2014.

Inspite of adjournment of the case four times, for filing of statement of claim by the petitioner, neither the petitioner appeared nor filed any statement of claim.So, on 17.04.2014, the reference was closed, holding that the petitioner was not interested to proceed with the reference and the reference was fixed for award.

3. It is well settled that whenever a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the party fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the party would not be entitled to any relief.

Judging the present case with the touch stone of the settled principles as mentioned above, it is found that the petitioner has neither appeared nor filed any statement of claim and as such, he is not entitled to any relief. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 26 मई, 2014

का.आ. 1626.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 50/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/5/2014 को प्राप्त हुआ था।

[सं. एल-22012/91/2013-आईआर (सीएम-II)]

बी. एम. पटनायक, डैस्क अधिकारी

New Delhi, the 26th May, 2014

S.O. 1626.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2013 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Sasti U/G Mines No. 2, Dhoptala Sub Area, and their workmen, received by the Central Government on 26/05/2014.

[No. L-22012/91/2013-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/50/2013 Date: 08.04.2014

Party No. 1 : The Sub Area Manager,
Sasti U/G Mines No.2 of
Dhoptala Sub Area of Ballarpur Area of
WCL Post Sasti, Tah. Rajura,
Distt. Chandrapur (M.S.)

Versus

Party No. 2 : The General Secretary,
Rashtria Colliery Mazdoor Congress,
Dr. Ambedkar Ward, Ballarpur,
Dist. Chandrapur (M.S.)

AWARD

(Dated: 08th April, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Sasti U/G Mines No.2, Dhoptala Sub Area,WCL and the applicant, Shri Ravi Raipocham, the dependent son of Shri Panja Raipocham for adjudication, as per letter No.L-22012/91/2013-(IR CM-II) dated 03.09.2013, with the following schedule:-

> "Whether the action of the management of Dhoptala Sub Area of Ballarpur Area, Western Coalfields Limited in denying employment to Shri Ravi Raipocham, the dependant son of Shri Panja Raipocham who has already put in more than 35years of service, which is contrary to the provisions of para 9.4.4 of NCWA is legal & justified? If not, to what relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due.

Inspite of sufficient service of the notice, the petitioner neither appeared nor filed any statement of claim. The party No.1 appeared through their advocates on 17.02.2014.

Inspite of adjourning the casefour times, for filing of statement of claim by the petitioner, neither the petitioner appeared nor filed any statement of claim.So, on 08.04.2014, the reference was closed, holding that the petitioner was not interested to proceed with the reference and the reference was fixed for award.

3. It is well settled that whenever a party challenges the legality of an order, the burden lies upon him to prove the illegality of the orderand it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the party fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the party would not be entitled to any relief.

Judging the present case with the touch stone of the settled principles as mentioned above, it is found that the petitioner has neither appeared nor filed any statement of claim and as such, he is not entitled to any relief. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 29 मई, 2014

का.आ. 1627.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (संदर्भ संख्या 11/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/5/2014 को प्राप्त हुआ था।

[सं. एल-12011/129/2005-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1627.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank, and their workmen, received by the Central Government on 29/5/2014.

[No. L-12011/129/2005-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 11 of 2006

Parties : Employers in relation to the management of Punjab National Bank

AND

Their workmen

Present : Justice Dipak Saha Ray, Presiding Officer

Appearance :

On behalf of the Management : None

On behalf of the Workmen : None

State : West Bengal Industry : Banking

Dated : 24th April, 2014

AWARD

By Order No. L-12011/129/2005-IR (B-II) dated 18-4-2006 Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the management of Punjab National Bank in discontinuing Mr. Nakul Barui w.e.f. 14-4-2005 as temporary peon during the pendency of conciliation proceedings is justified and legal? Whether Mr. Nakul Barui is entitled for regularization in the bank at Tekhali Bazar Branch as Peon? If so, from what date? If not, to what relief he is entitled?"

2. None appears on behalf of either of the parties when the case is taken up for hearing today. It appears from the record that on 29.01.2014 the union/workman was given opportunity to appear before the Tribunal through its representative on 10.03.2014; but none appeared on the said date.

3. Considering the above facts and circumstances and the conduct of the union, it may reasonably be presumed that the union does not want to proceed with the case further. Perhaps, the dispute between the parties has been settled amicably.

4. Accordingly, the instant reference is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 24th April, 2014

नई दिल्ली, 29 मई, 2014

का.आ. 1628.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ सं. 10/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/5/2014 को प्राप्त हुआ था।

[सं. एल-12011/128/2005-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1628.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2006 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank, and their workmen, received by the Central Government on 29/05/2014.

[No. L-12011/128/2005-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 10 of 2006

Parties : Employers in relation to the management of Punjab National Bank.

AND

Their workmen

Present : Justice Dipak Saha Ray, Presiding Officer

Appearance :

On behalf of the Management : None

On behalf of the Workmen : None

State : West Bengal Industry : Banking

Dated : 24th April, 2014

AWARD

By Order No. L-12011/128/2005-IR (B-II) dated 18-4-2006 Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

> "Whether Mr. Ramjan Ali Mollah, Part Time Sweeper is entitled for regularization in the Punjab National Bank as a Peon? If so, from what date? If not, to what relief he is entitled?" Whether the Bank is justified in appointing or recruiting some other new person as Peon at Sarberia Hatkhola Branch by removing Mr. Ramjan Ali Mollah? If not, what relief Mr. Ramjan Ali Mollah, Part Time Sweeper is entitled?"

2. None appears on behalf of either of the parties when the case is taken up for hearing today. It appears from the record that on 29.01.2014 the union/workman was given opportunity to appear before the Tribunal through its representative on 10.03.2014; but none appeared on the said date.

3. Considering the above facts and circumstances and the conduct of the union, it may reasonably be presumed that the union does not want to proceed with the case further. Perhaps, the dispute between the parties has been settled amicably.

4. Accordingly. the instant reference is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 24th April, 2014

नई दिल्ली, 29 मई, 2014

का.आ. 1629.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार न्यू इंडिया इंशोरैंश कम्पनी लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 16/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/05/2014 को प्राप्त हुआ था।

[सं. एल-17011/10/2001-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1629.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial Dispute between the management of The New India Assurance Company Limited and their workmen, received by the Central Government on 27/05/2014.

[No. L-17011/10/2001-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CU-LABOUR COURT, KANPUR

Industrial Dispute No. 16 of 2001

Between :

Mithlesh Kumar,
Through Hind Mazdoor Sabha,
117/K-36, Sarvodya Nagar,
Kanpur

And

The Regional Manager,
The New India Assurance Company Limited,
D.O. III, 109/421-A, Hotel Swagat Building,
Nehru Nagar, Kanpur

Ref. L-17011/10/2001-IR (B-II) Dt. 27-7-2001

AWARD

1. Central Government, Mol New Delhi has referred the following dispute for adjudication-

2. Whether the action of the management in New India Assurance Company Limited, Dibiapur, in terminating the services of Sri Mithlesh Kumar with effect from 01.05.95, is legal and justified? If not, what relief the concerned workman is entitled to?

3. Brief facts are-

4. It has been alleged by the workman that he was engaged as a IVth Employee at Dibiyapur Branch of the opposite party 11.08.89, which was opened newly. His work and conduct was satisfactory. But he was removed all of a sudden by the management on 4.03.91, without any notice and compensation in an illegal manner. He raised the dispute before the ALC copy of which has been filed. Opposite has filed the reply wherein they have admitted that the worker has worked for 277 days in the last 12 months. At that time before the ALC during conciliation proceedings the workman was again taken on job by the management. The copy of this letter has been filed. The opposite party with malafide intention has continued the workman to be in the job till 01.05.95 when his services were again terminated by the employer without any information or without offering retrenchment compensation or notice or notice pay. Therefore, the workman has prayed that the action of the management in the manner stated above amounts to unfair labour practice and is liable to be rejected. It has also been stated by the workman that he had worked for more than 240 days prior to his termination.

5. It is also alleged that some junior in the name of Vinod and Jagdish are still working and new recruit in the name of Raju has also been engaged in his place

6. Lastly, it has been prayed by him that the action of the management be declared to be unfair and unjust and he be directed to be reinstated in the service of the opposite party with full back wages and all consequential benefits.

7. Opposite party has filed reply. It has been stated that the workman was engaged as temporary water boy on ad-hoc basis with effect from 11.08.89 at the Dibiyapur branch of the company and he was being paid charges of Rs.15/- per day as wages. It is further stated that there never existed relationship of master and servant between the workman and the employer, he was never asked to mark his attendance, he never completed continuous work for 240 days therefore question of compliance of the provisions of Industrial Disputes Act in the facts and circumstances of the case does not arise. Therefore, the reference is liable to be decided against the workman and in favour of the management.

8. Rejoinder has also been filed by the workman but nothing new has been added therein except reiterating the

facts already alleged in his claim statement. Both the parties have adduced oral evidence. Whereas the workman has also filed documentary evidence but no documentary evidence has been filed by the opposite party.

9. I have examined the statement of w.w.l Mithlesh Kumar who has stated on oath that when a new branch was opened at Dibiyapur by the opposite party, he was engaged on 11.08.89 as a peon. This fact has been admitted in the written statement as well as in evidence in the cross by M.W.l Sri S C Arya, who is a Deputy Manager. M.W.l had been a Manager in the said branch since 1993 to 2000.

10. W.W.l has pleaded that his services were previously terminated on 04.03.1991. When he filed a case before the ALC, alleging that he had completed more than 240 days in each year so he should be reinstated. By that time he was reinstated. This fact has not been denied by M.W.1. But the Government somehow sent a case for regularization of his services which case could not be materialized. Getting aggrieved the management again terminated his services with effect from 01.05.95 orally. When the opposite party terminated his services he was neither offered any notice, notice pay or retrenchment compensation.

11. He has also filed several documents i.e. paper no.32/8-32/18. Paper no.32/08 is very important, which is an inter-se correspondence in between the Branch Manager and the Divisional Manager. On 27.08.92 the opposite party has admitted the engagement of the applicant clearly. This letter also states that as per regional office verbal instructions we again engaged Sri Mithlesh Kumar as water filling boy as we have to arrange water from outside the premises as there is no water pipeline. Similarly the applicant has filed the attendance sheet detailing the working applicant.

12. It is also contended by the workman that they have moved the application for summoning the record but the opposite party did not file the record. The opposite party did not challenge the veracity of the document like paper 0.32/8 filed by the workman. It is also admitted by the opposite party that neither any notice, notice pay or retrenchment compensation was paid to the workman in the year 1995. He also admitted that the workman continued to work during his tenure at the branch office at Dibiyapur. Therefore, in my view the evidence adduced by the workman along with the documentary evidence appears to be believable. The evidence adduced by the opposite party does not inspire confidence as the engagement of the applicant has already been in the pleadings.

13. Therefore, the claimant has been able to prove his case. Considering the length of the service rendered by the claimant under the expectation that one day he may get a regular job, I feel that it is a case, where the reinstatement of the applicant is desirable. The action of the management in terminating the services of the claimant is neither legal nor justified.

14. Accordingly, I direct the opposite party to reinstate the workman. The workman was being paid a very low amount Rs.15/- per day, considering the inflation and other aspects of the case, I also direct that the workman will also be entitled 20% of the back wages because the delay has already been explained by the workman and it is found that there was no deliberate delay on the part of the workman.

15. Reference is decided accordingly in the above terms.

RAM PARKASH, Presiding Officer

नई दिल्ली, 29 मई, 2014

का.आ. 1630.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोलकाता पत्तन न्यास के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ सं. 47/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/05/2014 को प्राप्त हुआ था।

[सं. एल-32011/9/2003-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1630.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the Industrial Dispute between the management of Kolkata Port Trust and their workmen, received by the Central Government on 29/05/2014.

[No. L-32011/9/2003-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 47 of 2003

Parties : Employers in relation to the management of Kolkata Port Trust

AND

Their workmen

Present : Justice Dipak Saha Ray, Presiding Officer

Appearance :

On behalf of the Management : None

On behalf of the Workmen : None

State : West Bengal Industry : Port & Dock

Dated : 24th April, 2014

AWARD

By Order No. L-32011/9/2003-IR (B-II) dated 12-12-2003 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Kolkata Port Trust in denying the Bearer's pay by creating a supernumerary post w.e.f. 1.9.1999 in respect of Shri S. K. Abdul Mabu, Masalchi of S. D. Subarnarekha is legal and justified? If not, what relief the concerned workman is entitled to?"

2. When the case is taken up today for hearing, none appears on behalf of the union/workmen though the management is represented by its representative. It appears from the record that on the last date, i.e., on 08.04.2014 none appeared on behalf of the union inspite of service of notice. Considering the above facts and circumstances and the conduct of the union it may reasonably be presumed that the union/workman is not interested to proceed with the instant reference case further. Perhaps the workman has no grievance against the management at present.

3. Considering the above facts and circumstances, instant reference is disposed of by passing a "No Dispute Award"

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 24th April, 2014

नई दिल्ली, 29 मई, 2014

का.आ. 1631.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 43/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/05/2014 को प्राप्त हुआ था।

[सं. एल-12012/20/2000-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1631.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India, and their workmen, received by the Central Government on 21/05/2014.

[No. L-12012/20/2000-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/43/2009 Date : 16.05.2014

Party No. 1 : The Asstt. General Manager,
Region-I, SBI Zonal Office,
S.V. Sardar Vallabhbhai Patel Marg,
P.B. No. 37, Nagpur-1

Versus

Party No. 2 : Shri S.A. Mukhare,
R/o. Ashok SBI Emp. Colony,
Opp. Ayurved College,
Amravati (MS).

AWARD

(Dated : 16th May, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of SBI and their workman, Shri S.A. Mukhare, for adjudication, as per letter No.L-12012/20/2000-IR (B-I) dated 11.02.2010, with the following schedule:-

"Whether the action of the management of State Bank of India, Nagpur in imposing a penalty of dismissal on their workman, Shri Shantaramji Akaramji Mukhare vide order dated 06.05.1999 is legal and justified? If not, what relief the workman is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Shantaramji Akaramji Mukhare, ("the workman" in short) filed the statement of claim and the management of SBI, ("party no.1" in short) filed the written statement.

The case of the workman as projected in the statement of claim is that he was appointed as a Clerk in the year 1960 and was promoted as the Head clerk in 1972 and was posted at Badnera branch, Amravati of party no.1 and his long service career was clean and unblemished and he was served with the charge sheet dated 22.11.1996, containing five charges relating to forged withdrawals, which had been passed by him, in terms of paras 521 (4)(j) and 521 (5)(a) and he submitted his reply to the said charge sheet, denying the charges and party no.1 initiated the departmental enquiry against him and on conclusion of the departmental enquiry, the Enquiry Officer submitted his report, holding three of the charges to have been fully proved, one to have been partly proved and one charge not to have been proved against him and the Disciplinary Authority differed with the findings of the Enquiry Officer

and held all the five charges to have been proved, without giving him any opportunity to have his say and issued a show cause notice to him and imposed the punishment of dismissal by order dated 06.05.1999 and he raised a dispute under section 2A of the Act, before the ALC (Central), Nagpur and since the conciliation failed, failure report was submitted by the ALC to the Central Government, but the Central Government by letter dated 14.02.2000 refused to make the reference to the Labour Court.

The further case of the workman is that he filed writ petition no. 3794/2001, challenging the order dated 14.02.2000, before the Hon'ble High Court, Nagpur Bench and the Hon'ble High Court by judgment dated 08.12.2009 allowed the petition, therefore, the Government of India by order dated 11.02.2010 referred the dispute for adjudication to the Tribunal.

The workman has further pleaded that the charges levelled against him were regarding five forged withdrawals and it was not the allegations that he pocketed any amount and no charge regarding misappropriation was framed against him and as such, the enquiry officer went beyond the charge and held that money was handed over to him and in view of the same, the enquiry held against him is vitiated and after passing of the five withdrawals by him, as per practice, the same were countersigned and passed by another officer and the manager of the branch, therefore, those officers were also charge sheeted and enquiry was held against them and punishment of dismissal from services was also passed against them and those two officers and he himself preferred departmental appeals and even though identical charges were framed against all three of them, his appeal was rejected, whereas, the appeals of the other officers and the manager were dealt with leniently and they were let off with minor punishments and thus, it is clear that he was made the scape goat and discriminated and victimized and for that the order of his dismissal from services is liable to be quashed and set aside and the findings of the enquiry officer are perverse and the findings are not supported by the evidence on record and he was not given an opportunity to put forward his case and the principles of natural justice were not followed and so far charge (b) is concerned, basing on hearsay evidence, the enquiry officer held the same to have been proved, as the account holder Kulkarni died and his son appeared in the enquiry and gave evidence and the enquiry officer committed error in holding all the charges except charge (a) to have been proved and the disciplinary authority also committed an error holding all the charges including charge (a) to have been proved and as such, the enquiry held against him was bad in law and the party no.1 failed to consider his unblemished service record, while imposing the punishment of dismissal and so also the fact that he was due to be retired on 31.05.1999 and thus, the punishment was not bona-fide, but was in colorable exercise of employer's right. The workman has also pleaded that party no.1 failed to take into consideration that the entire amount alleged to have been misappropriated was recovered and the bank was not put to any financial loss and imposition of the extreme penalty of dismissal was totally illegal and improper and the 8 criminal cases filed against him by the CBI are pending and the said facts support his contention that there was no material to show that he misappropriated the amount.

The further case of the workman is that accountant-Mitkari, Field officer- Zamara, Clerk- Kale and peon-Landge were served with charge sheets and against them also identical charges were levelled and 8, 6 and 5 criminal cases were also filed against them respectively and accountant- Mitkari expired during pendency of the appeal, so he was treated as retired and his family members were given pensionary benefits and Field officer- Zamare also retired from service and he is also getting pensionary benefits and clerk- Kale and peon- Landge are in service and peon- Landge became prosecution witness, so he was let off and these facts show discriminatory treatment given to him and when criminal prosecution were pending, the enquiry proceedings ought to have been stayed till completion of the criminal proceedings and thus, the order impugned is violative of the provisions of clause 521 (3) of Sastry Award and in view of the facts and circumstances mentioned above, the punishment of dismissal from services imposed against him is grossly disproportionate and he is entitled for reinstatement in service with effect from 06.05.1999 with full back wages and continuity in service and also to the pensionary benefits with effect from 31.05.1999.

3. The party no.1 in the written statement of claim has pleaded inter-alia that the workman came to be appointed as a clerk in the Bank in 1960 and in 1972, he was promoted as a Head clerk and posted at Badnera Branch and he was assigned the duties of passing of withdrawals and while working at Badnera Branch from 21.02.1990 to 11.12.1990, he committed various act of fraud, cheating, theft, misappropriation of funds, criminal breach of trust and forging accounts etc and the misdeeds amount to gross-misconduct under the service rules and it lodged a criminal complaint, which was investigated by CBI and after investigation, CBI filed charge sheet against the workman and to its knowledge, the criminal prosecution is still pending in the court of law and it issued charge sheet dated 22.11.1996 against the workman, under clause 521 (4) (j) of Sastry Award and the workman submitted his explanation in a very evasive manner, denying the charges and it being not satisfied with the explanation, decided to hold the departmental enquiry against the workman and the enquiry commenced on 16.05.1998 and concluded on 07.04.1999 and 10 witnesses were examined and 16 documents were produced to prove the charges against the workman and the workman cross-examined all the witnesses through his experienced and competent defence

representative and the workman produced documents in support of his case and the Bank and the workman submitted their case to the enquiry officer and the enquiry officer submitted his report dated 23.04.1999, holding the charge (a) not to have been proved, charge (b) to be partially proved and the rest of the charges to have been fully proved against the workman and the disciplinary authority agreed with the findings of the enquiry officer regarding charges (c), (d) & (e), but did not agree with the findings in respect of charges (a) and (b) and issued a detailed reasoned show cause notice dated 29.04.1999 proposing the punishment of dismissal from services without notice, alongwith the copy of the enquiry report and it was specifically stated in the show cause notice that though the charges were simple from procedural point of view, but their significance was too serious to ignore the matter or to take it with leniency and the workman choose not to avail the opportunity to represent his case, before the disciplinary authority and the workman and his defence representative did not appear in support of their case before the disciplinary authority and the disciplinary authority duly considered the enquiry report and after examining the entire matter independently, came to the conclusion that all the charges against the workman to have been proved and passed the final order of dismissing the workman from services without notice on 06.05.1999 and the appeal preferred by the workman against the order of punishment was dismissed by the appellate authority, after giving opportunity of personal hearing to the workman and taking into consideration the facts and circumstances of the case and grounds of appeal.

It is also pleaded by party no.1 that prosecution of the workman for various offence does not entitle him to claim immunity from service rules and the purposes of criminal prosecution and departmental enquiry are different and different official and officers were charge sheeted for different misconducts according to their duties and different punishments were awarded to each workman, depending upon their duties, charges, proof and other attending circumstances and there was no question of any discriminatory treatment against the workman by it and the punishment imposed on the workman is as per the service rules and the workman has made attempt to prove that enquiry was like a criminal trial and principles of criminal jurisprudence are applicable to the enquiry and the enquiry officer accepted the evidence after considering all the facts and circumstances of the matter and the earlier unblemished record is no ground to interfere with the punishment and the workman who had committed grave/ gross-misconduct must suffered the consequences for the same and he cannot be allowed to escape punishment and the service rules speak that if trial is not commenced within one year, the bank is at liberty to proceed against the workman under service law and the punishment imposed is quite proportionate and the workman was found guilty of cheating, theft, purloin, forgery, criminal breach of trust and it was not desirable and possible to continue him in service and any relief to the workman will amount to premium on dishonesty and encourage undisciplined in banking sector and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services as punishment, after holding of a departmental enquiry against him, the fairness or otherwise of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 10.01.2014, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that the workman joined the service of party No.1 as a clerk in the year 1960 and in 1972, he was promoted as a Head clerk and his service record during the long span of his career was absolutely clean and unblemished and the five charges levelled against the workman were regarding forged withdrawals and gross negligence and no charge of misappropriation was framed against him and no financial loss whatsoever had been suffered by the Bank as all the money was recovered and though the workman had passed 4-5 forged withdrawals, the Enquiry Officer erroneously held that the money was handed over to the workman and on that count, the findings of the Enquiry Officer are required to be quashed and alongwith the workman, five other employees were charge sheeted and criminal prosecutions were also launched against them and though minor punishments were imposed against them, the workman was discriminated and he was dismissed from services and this is not permissible in Law and the punishment of dismissal of the workman from services is shockingly disproportionate looking into the nature of the charges and as the workman has already crossed the age of retirement, he be allowed pensionary benefits.

In support of the contentions, the Learned Advocate for the workman placed reliance on the decision reported in 2010-I-LLJ-37 (Bom) (Ratnakar P M Vs. UCO Bank).

6. Per contra, it was submitted by the Learned Advocate for the Party No.1 that by order dated 10.01.2014, the departmental enquiry conducted against the workman has already been held to be legal, proper and in accordance with the principles of natural justice and the Tribunal does not enjoy the powers of appeal and the scope of judicial review is limited and the evidence adduced and the documents produced before the Enquiry Officer fully proved the charges against the workman and the findings of the Enquiry Officer are based on the evidence adduced in the enquiry and the findings are not perverse and in the entire statement of claim, nowhere, there is any whisper that the findings of the Enquiry Officer are perverse or as

to how they are perverse and in banking business, absolute devotion, diligence, integrity and honesty need to be preserved by every employee of the Bank and the Bank has lost confidence on the workman and the punishment is just, fair and as per Law and Rules applicable to the workman and the workman is not entitled to any relief.

In support of the contentions, the Learned Advocate for the party No.1 placed reliance on the decisions reported in 2005 SCC(L&S)-567 (Damoh Panna Sagar Rural Regional Bank Vs. Munnalal Jain), 2005 SCC(L&S)-200(D.M. Plantation,Darda Vs.Munnu Barvica), 1998(4) SCC-310 (Union Bank of India Vs.Vishaw Mohan), 1999 LAB IC-3833(SC)(High Court of Judicature of Bombay Vs. S.S. Patil), AIR 1998 SC-1185(Union of India Vs. Paramanand), 2005 SCC(L&S)-407 (Did Controller Vs. A.T.Mane) and many others.

Now, the present case in hand is to be considered, keeping in mind the principles enunciated by the Hon'ble Courts in the judgments cited by the Learned Advocates for the parties.

7. The two main contentions raised by the learned advocate for the workman are that besides the workman, five other employees were charge sheeted by the party No.1 on similar charges and though the other employees were given lesser punishments, the workman was discriminated and he was dismissed from services and as the amount of money was already recovered, there was no loss to the Bank and therefore, the punishment is shockingly disproportionate.

In the decision cited by the Learned Advocate for the workman, as reported in 2010- I-LLJ-37 (Supra), the Hon'ble High Court of Bombay have held that;-

"Punishment-Award of- Discrimination in award of punishment between two delinquent when charges against them and evidence were identical, held, not justified-Dismissal of one of them while other awarded reduction to lower stage in time scale by three stages, held discriminatory and set aside and same reduction in time scale imposed."

However, with respect, I am of the view that the above said decision has no application to the present case in hand, due to its different facts and circumstances from the facts and circumstances of the case referred in the judgment of the Hon'ble High Court.

In this case, though it is mentioned by the workman in the statement of claim that identical charges were levelled against the other employees, there is no pleading that in all the cases the evidence was also identical. The party no.1 has pleaded in the written statement that different officials and officers were charge sheeted for different misconduct according to their duties and different punishments were awarded to each employee, depending upon his duties, charges, proof and other attending circumstances and the employees were not charged for identical charges. No evidence has been adduced by the workman to show that the charges against him and the other five employees and so also the evidence against all of them were the same.

At this juncture, I think it proper to mention the principles enunciated by the Hon'ble Apex Court in the decision reported in 2003 SCC (L&S)-468 (P.C. Kakkar Vs. Chairman & Managing Director, United Commercial Bank & Others).

In the said decision, the Hon'ble Apex Court have held that:-

> "Misconduct-Penalty/punishment-Scope of judicial review of –Awarding of a lesser punishment to a co-delinquent, held, not a good ground for judicial interference with the quantum of punishment- More so, when the allegations in the two cases were contextually different- Constitution of India, Art. 226- Interference in service matters.
>
> Misconduct- Generally- Miscellaneous acts of misconduct- Bank officer- Mode of discharging of duties by- Held, he should act with utmost integrity, honesty, devotion and diligence and should do nothing unbecoming of a bank officer- Bank officer acting beyond his authority, even if not causing any loss to the bank, held, is nonetheless committing an of misconduct."

So, judging the present case with the touch stone of the principles as enunciated by the Hon'ble Apex Court as mentioned above, I find no force in the submissions made by the Learned Advocate for the workman.

8. It is well settled by the Hon'ble Apex Court in number of decisions including the decisions cited by the Learned Advocate for the party no.1 that the Disciplinary Authority and on appeal the Appellate Authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are vested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal while exercising the power of judicial review cannot normally substitute its own conclusions on penalty and impose some other penalty.

9. Keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions cited by the Learned Advocate for the party No.1, regarding the power and jurisdiction of the Tribunal in the matter of interference with the departmental enquiry and punishment, considered the materials on record and found that this is not a case of no evidence or that the findings of the Enquiry Officer are against the evidence on record or that the findings arrived at by the Enquiry Officer cannot be that of a prudent man on the basis of the evidence on record. The findings of the Enquiry Officer are based on the evidence on record of the enquiry and not any extraneous materials. The Enquiry Officer has assigned reasons in support of his

findings after analyzing the evidence on the record of the enquiry in a rational manner. The Disciplinary Authority has also assigned reasons for not agreeing with the findings of the Enquiry Officer in regard to charges (a) and (b) and the reasons for holding the said two charges to have been fully proved. So, the findings of the Enquiry Officer or that of the Disciplinary Authority cannot be said to be perverse.

10. So far the proportionality of the punishment is concerned, serious misconduct of doing an act prejudicial to the interest of the Bank and gross negligence has been proved against the workman in a properly conducted departmental enquiry. Hence, the punishment of dismissal from services passed against the workman cannot be said to be shockingly disproportionate calling for interference. Hence, it is ordered.

ORDER

The action of the management of State Bank of India, Nagpur in imposing a penalty of dismissal on their workman Shri Shantaramji Akaramji Mukhare vide order dated 06.05.1999 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 29 मई, 2014

का.आ. 1632.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, धनबाद के पंचाट (संदर्भ संख्या 103/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/97/1996-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1632.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 103/1997) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India, and their workmen, received by the Central Government on 13/05/2014.

[No. L-12012/97/1996-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

Reference: No. 103 /1997

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Employer in relation to the management of State Bank of India, Sindri, Dhanbad

AND

Their workmen

Present : SRI R. K. SARAN, Presiding Officer

Appearances :

For the Employers : Sri S.N.Goswami , Advocate

For the Workman : None

State : Jharkhand Industry- Banking

AWARD

Dated : 28/4/2014

By order No. L-12012/97/ 1996 /IR (B-I) dated 25/04/1997, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the manager State Bank of India Sindri Branch P.O. Sindri Dist. Dhanbad in denying to regularize the services of S/Shri Raghubir Kamti and four others (S/Sh. Gaghubir Kamit, Shankar Lal Mahanta, Ram Punit Mishra, Ayodhya Ram) in violation of the terms of settlement of Nov. 89 is justified? If not, to what relief the workmen are entitled?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence, No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 29 मई, 2014

का.आ. 1633.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल इन्सोरेंस कं. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 11/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/4/2014 को प्राप्त हुआ था।

[सं. एल-17011/26/2002-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1633.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the Industrial Dispute between the management of National Insurance Co. Ltd., and their workmen, received by the Central Government on 16/04/2014.

[No. L-17011/26/2002-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 11 of 2003

Parties : Employers in relation to the management of National Insurance Co. Ltd., Kolkata

AND

Their workmen.

Present : JUSTICE DIPAK SAHA RAY, Presiding Officer

Appearance :

On behalf of the Management : None

On behalf of the Workmen : None

State : West Bengal Industry : Insurance

Dated: 19th March, 2014.

AWARD

By Order No. L-17011/26/2002-IR(B-I) dated 10.02.2003 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "Whether Sri Prabhat Kumar Mukhapadhaya and 13 others who are allegedly working as casual class-IV employees in different offices of National Insurance Company Ltd., Kolkata are entitled for regularization/absorption or not? If so, what relief they are entitled?"

2. When this case is taken up today, none appears on behalf of either of the parties inspite of service of notice. None also appeared on previous two dates. On careful perusal of the record it is evident that inspite of being given opportunities, the union has not turned up to give evidence. From the above conduct of the union it may reasonably be presumed that the union is no longer interested to proceed with this reference further. Perhaps the dispute between the parties does not exist at present.

3. Considering the above facts and circumstances, this Tribunal has neither any scope nor any reason to proceed with the case further. Accordingly, the present reference is disposed of by passing a "No Dispute Award".

Dated, Kolkata
the 19th March, 2014

JUSTICE DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 29 मई, 2014

का.आ. 1634.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 24/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/52/2011-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1634.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India, and their workmen, received by the Central Government on 21/05/2014.

[No. L-12012/52/2011-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/24/2011 Date : 13.05.2014

Party No. 1 : The Regional Manager,
State Bank of India,
Administrative Office,
S.V. Patel Marg, Kingsway,
Nagpur.

Versus

Party No. 2 : Shri Sunil Mulchand Nakwe,
C/o Shri Roshan Ramprasad Nakwe,
Datta Mandir Ward, Warora,
Tah. Warora, Distt. Chandrapur (MS)

AWARD

(Dated: 13th May, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of State Bank of India and their workman, Shri Sunil Mulchand Nakwe, for adjudication, as per letter No.L-12012/52/2011-IR (B-I) dated 11.10.2011, with the following schedule:-

> "Whether the action of the management of State Bank of India, Warora Branch, Chandrapur (M.S.) in terminating the service of Shri Sunil Mulchand Nakwe w.e.f. 05.11.2009 is legal and justified? To what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sunil Mulchand Nakwe, ("the workman" in short), filed the statement of claim and the management of State Bank of India ("Party No. 1" in short) filed their written statement.

The case of the workman as mentioned in the statement of claim is that he was appointed as a sweeper

by the party No.1 on 17.4.1994 on temporary basis and he worked from 17.04.1994 to 05.11.2009 continuously and without any interruption as per the direction of the Branch Managers and for the first month, he was paid his salary by cash and subsequent to that he was paid his salary by cheque and he was working for more than 12 hours daily and at times he was also doing overtime and he used to sign the muster roll and there was neither any complaint nor any disciplinary action against him and the party No.1 instead of regularizing his services, all of a sudden appointed someone in his place and terminated his services orally, without service of one month's notice in writing mentioning the reason of termination or payment of one month's pay in lieu of notice or retrenchment compensation and party No.1 failed to comply with the mandatory provisions of section 25-F of the Act, before termination of his services and as such, the termination of his services was illegal and the same is liable to be quashed and set aside and after termination of his service, he has not been gainfully employed.

The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The party No.1 in the written statement has pleaded inter alia that the workman worked purely on temporary and casual basis on daily wages, due to administrative exigencies and need of work and sometimes he worked for full time and sometimes for part of the day and the engagement of the workman was by the Branch Manager, who had no authority to appoint any person on permanent basis and his termination cannot be construed as arbitrary or illegal and the services of the workman were discontinued as per the settlements and a settlement dated 17.11.1987 was reached between the All India State Bank of India Staff Federation and the State Bank of India to provide inter-alia, for giving a chance to the eligible temporary/ daily wagers/casual employees in the Sub-ordinate cadre, for being considered for permanent appointment in the Bank and the said settlement as modified/ clarified vide settlements dated 27.10.1988, 09.01.1991 and 30.07.1996 and as per with the modification of the settlement dated 30.07.1996, it was agreed that both the panels of temporary employees and daily wagers/ casual employees would be kept alive up to 31.03.1997 and the said settlements are "settlements" within the meaning of section 2(p) and section 18(1) of the Act and are binding on the parties.

It is further pleaded by party No.1 that there is procedure for appointment on permanent basis and various norms including age and qualification are prescribed for the same and the workman was never subjected to the said conditions and he was engaged looking to the exigencies of the services and till persons on permanent basis were appointed by it in accordance with Rules and settlements in this regard and when the sanctioned post of sub-staff was filled, there was no alternative for it, but to terminate the workman and grant of relief as prayed for by the workman will be permanent appointment in other way, without following the procedure and as the initial engagement of the workman was purely on temporary basis, termination of his services was inevitable on completion of the purpose for which he was engaged and the mere fact of rendering 240 days of work by the workman in a year would not be sufficient to grant reinstatement, continuity of service and back wages, in view of the law laid down by the Hon'ble Apex Court and the workman did not work continuously from 17.04.1994 to 05.11.2009 and the workman is not entitled to any relief.

4. No rejoinder was filed by the workman to the written statement.

5. It is to be mentioned here that though the workman had filed his evidence on affidavit in support of his case, he did not appear for his cross-examination, so, by order dated 10.10.2013, his evidence on affidavit was expunged.

It is also necessary to mention here that the evidence of the witness for the party No.1, Shri Kishor Madhukarrao Mohdarkar on affidavit remained unchallenged, as none appeared on behalf of the workman to cross-examine the said witness on 30.01.2014, to which date the reference was fixed for the said purpose and order of "no cross" of the witness was passed. On 30.01.2014, order was also passed to proceed with the reference ex-parte against the workman, as the workman failed to appear and take part in the reference.

6. It is clear from the pleadings of the parties that the workman was engaged by the Branch Manager on temporary basis on daily wages. So, the initial burden was on the workman to prove that infact he had worked for 240 days in the preceding 12 calendar months of the alleged date of termination of his services i.e. 05.11.2009 to get the benefits of the provisions of section 25-F of the Act. However, the workman failed to adduce any evidence.

It is well settled that when a workman raises a dispute challenging the validity of the termination of his services, it is imperative for him to file the written statement before the Industrial Court setting out the grounds on which the order is challenged and he must also produces evidence to prove his case. If the workman fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he would not be entitled to any relief.

Judging the present case in hand with the touch stone of the settled principle as mentioned above, it is found that the workman has failed to produce any evidence to prove his case and as such, the reference cannot be answered in his favour and he is not entitled to any relief. Hence, it is ordered:-

ORDER

The action of the management of State Bank of India, Warora Branch, Chandrapur (M.S.) in terminating the service of Shri Sunil Mulchand Nakwe w.e.f. 05.11.2009 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 29 मई, 2014

का.आ. 1635.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट (संदर्भ संख्या 78/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/5/2014 प्राप्त हुआ था।

[सं. एल-12012/266/2004-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1635.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India, and their workmen, received by the Central Government on 23/05/2014.

[No. L-12012/266/2004-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No.78/2005

Registered on 20.4.2005

Smt. Radha Devi,
W/o Sh. Dharam Pal,
R/o Lakhe Wali Dhab,
Tehsil : Fazilka,
District : Ferozepur .....Petitioner

Versus

The Assistant,
General Manager –I,
State Bank of India,
Zonal Office (Punjab),
Fountain Chowk,
Civil Lines, Ludhiana .....Respondent

APPEARANCES :

For the workman : Sh. D.K. Sihag Adv.
For the Management : Sh. S.K. Gupta Adv.

AWARD

Passed on 6.5.2014

Central Government vide Notification No. L-12012/266/2004-IR(B-I) Dated 3/21.3.2005, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of State Bank of India, Ludhiana in terminating the service of Smt. Radha Devi, Ex-sweeper-cum-peon, w.e.f. 11.3.2003 without complying with the statutory provisions of Sections 25F, G and H of ID Act is just and legal? If not, to what relief the workman is entitled to?"

In response to the notice, the workman appeared and filed statement of claim pleading that she worked with the respondent management as Sweeper-cum-Peon for the last more than 10 years at Kheo Wala Dhab Branch of respondent management. Her services were arbitrarily terminated on 3.11.2003 without issuing her any notice, charge-sheet and without payment of any compensation. She was drawing Rs. 50 per day. It is further pleaded that as per Shastri Award, notice was required to be served before termination of her services but no such notice was served on her. It is further pleaded that respondent bank used to give salary after obtaining signature of another person and thus indulged in unfair labour practice. It is further pleaded that Ram Kumar was employed in her place. Since the termination of her services is illegal, she be reinstated in service with back wages.

Respondent management filed written reply pleading that the workman was engaged as a casual labourer from October 1997 to August 2003 as and when required on an agreed sum to work as sweeper and she was not appointed as sweeper as no such post exist in the branch. It is denied that Ram Kumar was engaged in the bank.

Parties led their evidence.

In support of its case the workman appeared in the witness box and examined Ashwani Kumar and Rameshwar Dayal.

Workman filed her affidavit reiterating her case as set out in the claim petition.

Ashwani Kumar is an official of the bank and was summoned with the record. He has deposed that the workman used to be engaged as a casual labourer and was paid Rs. 25 per day. He has further deposed that the attendance of the casual labourers is not recorded and only the payment of wages are mentioned in the petty cash register.

Rameshwar Dayal is another official of the bank and remained posted at Kheo Wala Dhab Branch in the year 1988. He has stated that management used to call the workman and at times somebody else was called to work. The workman was paid Rs. 20 per day initially and at the time of her termination she was getting Rs. 50 per day.

On the other hand the management has examined Bansi Lal, Branch Manager who filed his affidavit reiterating the stand taken by the management in the written statement.

I have heard Sh. D.K. Sihag, counsel for the workman and Sh. S.K. Gupta, counsel for the management.

It was vehemently argued by the learned counsel for the workman that she continuously worked as sweeper-cum-peon for 10 years and her services were arbitrarily terminated on 3.11.2003 without complying with the provisions of the Act and as such the termination is illegal.

On the other hand it was contended by the learned counsel for the management respondent that workman was employed as a sweeper on work need basis and she was paid for the day she worked and she has got no right to the post as much as no post of sweeper exists in the branch and the claim made by the workman without merit be dismissed.

It as an admitted fact that the workman worked with the respondent management from 1997 to 2003 as sweeper. It is the stand of the management that she was engaged as sweeper as and when required as a casual labourer. The workman herself summoned and examined two officials of the respondent bank namely Ashwani Kumar and Rameshwar Dayal along with the record and who at one point of time remained posted in the branch where the workman worked. Ashwani Kumar has specifically stated that the workman used to be engaged as a casual labourer and was paid Rs. 25 as daily wages in the year 2002. Rameshwar Dayal who remained posted in the branch in 1988 has also stated that management used to call the workman sometimes and at times somebody else used to work in case of need and she was paid Rs. 20 per day initially. Thus the witnesses examined by the workman have specifically stated that the workman was engaged as a casual labourer for sweeping purposes on daily wage basis. There is nothing on the file to suggest that the workman was appointed as a sweeper in the branch or any procedure was followed for appointing her as such and therefore she can claim that she was appointed as sweeper. It is also not her case that she was appointed as such by the management. Thus the only conclusion is that the management used to call her at times to do the work of sweeping and she was paid on daily wages basis. She herself admits that she was not getting any pay for the holiday which further shows that she was working on daily wage basis. When it is so, she has got no right to the post and her termination cannot be termed as illegal as the termination of daily wagers do not amount to 'retrenchment' and in this respect reliance may be placed on –

Himanshu Kumar Vidyarthi and others, Petitioners v. State of Bihar and others, Respondents wherein it was observed that – They are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of retrenchment, therefore, cannot be stretched to such an extent as to cover these employees. The learned counsel for the petitioners seeks to contend that in the High Court, the petitioners did not contend that it is a case of retrenchment but termination of their services is arbitrary. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary.

Thus, it cannot be said that the termination of the services of the workman are illegal and she is not entitled to any relief and the reference is answered against her. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 29 मई, 2014

का.आ. 1636.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण मालाबार ग्रामीण बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अरूनाकुलम के पंचाट (संदर्भ संख्या 20/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/5/2014 प्राप्त हुआ था।

[सं. एल-12011/04/2012-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1636.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 20/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the management of South Malabar Gramin Bank, and their workmen, received by the Central Government on 13/05/2014.

[No. L-12011/04/2012-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri D.SREEVALLABHAN, B.Sc., LL.B, Presiding Officer

(Tuesday the 29th day of April, 2014/9thVaisakha, 1936)

ID 20/2012

Union : The General Secretary
South Malabar Gramin Bank Staff Association
C/o South Malabar Gramin Bank
Malappuram Kerala - 676505

By Adv Shri Vinod Vallikappan

Management : The Chairman
South Malabar Gramin Bank
Malappuram Kerala - 676505

By M/s. ANP Associates

This case coming up for final hearing on 28.04.2014 and this Tribunal-cum-Labour Court on 29.04.2014 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour vide its Order No-L-12011/04/2012-IR(B-I) dated 11.06.2012 has referred the industrial dispute to this tribunal for adjudication.

2. The dispute is:

'Whether the demand of the Union, South Malabar Gramin Bank Staff Association, for payment of salary for the period of suspension to Shri Sreedharan V. Staff No.760, is legal and justified? To what relief the workman is entitled?'

3. The workman was working as a Clerk-cum-Cashier in the management bank. While he was working in the Karaparamba Branch he was suspended from service w.e.f.24.11.2008 after initiating disciplinary proceedings against him for the alleged misconduct of insubordination and dishonest behaviour coming within the meaning of Regulations 17 and 19 of the South Malabar Gramin Bank (Officers & Employees) Service Regulations, 2001 and punishable under Regulation 38(II) therein. After conducting enquiry into the charges levelled against him he was imposed with the penalty of Censure by order dated 25.02.2010. The period of suspension from 24.11.2008 to 21.01.2009 is to be treated as not spent on duty as per that order. The appeal submitted by him challenging the findings of guilt and the imposition of penalty was dismissed by the Appellate Authority by order dated 15.07.2010. The dispute was raised with regard to the non-payment of salary for the period of suspension and the same was referred for adjudication.

4. After appearance before this tribunal union filed claim statement challenging the findings of the enquiry officer on the ground that the same were entered into without any reliable evidence and with the prayer to set aside the penalty imposed on him and the order of no pay for the period of suspension.

5. Management filed written statement contending that the penalty was imposed on the workman after conducting a proper enquiry by affording sufficient opportunity of defence to the workman and without violation of the principles of natural justice. It is also contended that the period of suspension was ordered to be treated as not on duty after duly considering the circumstances by exercising the discretion vested under Regulation 46 of the South Malabar Gramin Bank (Officers and Employees) Service Regulations, 2001. It is perfectly legal and just and hence the workman is not entitled to any relief.

6. Union did not file any rejoinder in spite of the opportunity afforded for that purpose.

7. After posting the case for evidence union was continuously absenting without any representation and hence was set ex-parte. From the side of the management one witness was examined as MW1 and Ext.M1 was marked.

8. The points that arise for consideration are:

(i) whether the demand of the union for payment of salary for the period of suspension to the workman is legal and justified?

(ii) what relief the workman is entitled to?

9. **Point No. (i) :** There is no challenge as to the validity of the enquiry in the claim statement. The imposition of penalty is challenged therein stating that findings were entered into by the enquiry officer not based on any reliable evidence. The enquiry officer was examined as MW1 and enquiry file was marked as Ext.M1. There is nothing to satisfy that the findings are perverse which calls for any interference. There was no attempt on the part of the union to satisfy that the demand for payment of salary for the period of suspension is based on any statutory provision or rules. It is specifically contended in the written statement that the disciplinary authority has the discretion to treat the period of suspension as not spent on duty. The burden is cast upon the union to prove that it is not legal. Union has failed to discharge the burden to prove it. The prayer for payment of salary for the period of suspension is made in the claim statement by making the allegation that the findings of the enquiry officer are liable to be set aside. There is no reason to set aside the findings of the enquiry officer. Union did not participate in the proceedings to prove that the findings are perverse and based on which no penalty can be imposed on the workman. Hence it can only be held that the demand of the union for payment of salary for the period of suspension is not legal and justified.

10. **Point No. (ii) :** In the result an award is passed holding that the demand of the union for payment of salary for the period of suspension is not legal and justified and hence the workman is not entitled to any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 29th day of April, 2014.

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witness for the workman - NIL

Witness for the management

MW1 25.04.2014 Shri C. M. Vinod Kumar

Exhibit for the workman - NIL

Exhibit for the management

M1 - Enquiry file

नई दिल्ली, 29 मई, 2014

का.आ. 1637.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, दिल्ली के पंचाट (संदर्भ संख्या 109/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/101/2011-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1637.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 109/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Delhi as shown in the Annexure, in the Industrial Dispute between the management of State Bank of Hyderabad, and their workmen, received by the Central Government on 21/05/2014.

[No. L-12012/101/2011-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, KARKARDOOMA, DELHI

Present : Shri Harbansh Kumar Saxena

ID No. 109/2012

Sh. Sanjib Mondal

Versus

State Bank of Hyderabad

No DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No L-12012/101/2011-IR(B-I) dated 24.2.2012 referred the following Industrial Dispute to this tribunal for adjudication :-

> "Whether the action of the management of State Bank of Hyderabad, Kailash Colony, New Delhi in terminating the services of Sh. Sanjib Mondal w.e.f. 05.08.2009 after paying one month salary and retrenchment compensation under Section 25 F of ID, Act 1947, is legal and justified? To what relief the workman is entitled for?

On 23.03.2012 reference was received in this tribunal. Which was register as I.D No. 109/12 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant Sh. Sanjib Mondal not filed claim statement but management moved an application for dismissal on 10.03.14. Wherein it mentioned as follows:-

1. That from order sheet dated 23.03.2012 passed by this Hon'ble Tribunal received reference no.L-12012/101/2011-IR(B-1) dated 24.02.2012 from Govt. of India, Ministry of Labour , New Delhi and this Hon'ble Tribunal directed to register it as ID case No. 109/12 and further directed to issue notice to parties for 13.06.2012 for first hearing of this case. The workman has been directed to file claim statement within 50 Days from the date of receipt of notice complete with all relevant documents, list of reliance and witnesses.
2. That thereafter this case was adjourned to 13.06.12 , 05.09.2013, 12.12.2012, 27.02.2013, 12.07.2013, 20.08.2013, 01.10.2013, 19.12.2013 and now for 10.02.2014 and it is pertinent to mention here that till date the workman did not comply the order dated 23.03.2012 passed by this Hon'ble Tribunal.
3. That in these circumstances it is clear that the workman is not interested to pursue his case and this case only deserves to the dismissed.

Prayer :

In view of above facts and circumstances of this case and also clear cut case of non compliance by the claimant of order dated 23.03.2012 till date, this case may kindly be dismissed for non prosecution.

Any other order/orders in favour of Respondent bank and against the claimant in view of facts and circumstances humbly submitted by the Respondent bank.

On the basis of non-interestedness of workman. The proceeding of this case is not liable to be proceeded further. Hence proceeding of the case is liable to be dropped and no dispute award is liable to be passed.

No Dispute Award is accordingly passed.

Dated : 25/04/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 29 मई, 2014

का.आ. 1638.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 127/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/4/2014 को प्राप्त हुआ था।

[सं. एल-41011/45/1995-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1638.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 127/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of Western Railway, and their workmen, received by the Central Government on 24/04/2014.

[No. L-41011/45/1995-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : SHRI BINAY KUMAR SINHA,
Presiding Officer, Ahmedabad

Dated:14th March, 2014

Reference (CGITA) No. 127/2012(New)

Reference (I.T.C) No. 14 of 1997(old)

Adjudication Order No. 41011/45/95-IR(B-I)

1. The Chief Project Manager,
Western Railway,
Kothi Compound, Rajkot

2. The Divisional Railway Manager,
Western Railway, Kothi Compound,
Rajkot

3. The Executive Engineer(C&S)
Western Railway, Kothi Compound,
Rajkot ……1st party

And

Their workman
Through the Secretary ,
Paschim Railway Karmachari Parishad,
E/209, Sarvottam Nagar,
Behind New Railway Colony,
Sabarmati, Ahmedabad ……2nd party

For the 1st Party : Shri Harsh B. Shah, Advocate

For the 2nd party : Shri K.T. Mishra, Advocate

Shri R.S. Sisodia,General Secretary,

P.R.K.P., Ahmedabad

AWARD

The industrial dispute between the management of western railway and their workmen had been initially referred for adjudication to the C.C.I.T. Labour Court, Kanpur under the adjudication order no.41011/45/95-IR (B-1) dated dt.07/02/97 by the desk officer, Government of India/Ministry of labour, New Delhi which was subsequently with drawn by the Central Government/ Ministry of Labour, New Delhi by order dated dt.17/ 20.03.1997 and was transferred for adjudication to the presiding officer Industrial Tribunal, Ahmedabad to proceed with the proceeding from the stage at which they are transferred and to dispose of the case as per terms of reference specified in the schedule.

SCHEDULE

"Whether the action of the management of divisional Railway Manager, Western Rly. Rajkot for not conducting the screening and the regularisation of the services of the 17 project casual labourers under PWI(C) Nadiad and all those project casual labourers, who have been recruited in the geographical jurisdiction of Rajkot division and presently are on the rolls of Chief project manager, Western Railway, Ahmedabad, is proper and justified? If not to what relief, the concerned project casual labourers are entitled and from which date and what directions are necessary in the matter?

2. It may not be out of place to mention that earlier in this reference under (I.T.C) No 14/97 award dated 09.02.2004 was passed by Smt. N.J.Shelat, the then Presiding officer,Industrial Tribunal, Ahmedabad in such way – under the facts and circumstances of the case and in view of the aforesaid discussions. I find that all the 17 projects Causal Labours under P.W.I(c) Nadiad and all those project Casual labourers who have been recruited in the geographical jurisdiction of Rajkot division and at present are on the rolls of Chief Project Manager, Western Railway, Ahmedabad have already been regularised and therefore they are not entitled to any relief and rejecting the reference as infructuous. Then the Union (P.R.K.P.) preferred special civil application No. 5567 of 2004 before the Hon'ble Gujarat

High Court against the aforesaid award dated 09.02.2004 and the Hon'ble High Court vide judgment dated 05.07.2012 passed in S.C.A. No. 5567 of 2004 with Civil Application No. 371 of 2012 in S.C.A. No. 5567 of 2004 has been pleased to quash the award dated 09.02.2004 passed in the reference case 14/97 and remanded back the record to the Tribunal for deciding it afresh in the light of the terms of reference. The Tribunal on remand shall decide the same as soon as possible, preferably within six months from the date of receipt of writ of this Court as per direction given in para 7 and 8 of the judgement. "In view of order passed in main petition Civil application No. 371/2012 will not survive and is disposed of with the main matter Rule discharged. No costs."

3. Thereafter the record of reference was received in this C.G.I.T-cum- Labour Court on 12.09.2012 from the Industrial Gujarat, Ahmedabad and new (C.G.I.T.A) No. 127/12 was registered and notice was issued to the parties to appear and to argue the matter since as per direction of the Hon'ble Court this reference case has to be disposed of within six months, fixing for hearing on 04.10.2012. The argument of the 2nd party Union was heard and concluded on 10.08.2013 and the matter was fixed for hearing argument of the party (Rly.) and when it was fixed for argument of the 1st party Railway on 02.09.2013, 1st party's lawyer Shri H.B.Shah appeared on filed an application (Ext.49) to allow the parties to file afresh S/c and W.s and to adduce evidence in view of the order passed by the Hon'ble Gujarat High Court at para 8 of judgement in S.C.A. No. 5567 of 2006 with Civil Application No.371/2012. The prayer made by the 1st party lawyer vide Ext. 49 was rejected by this Tribunal by a detailed order dated 02.09.2013 (Ext.50) directing the 1st party's lawyer to argue on 05.09.2013. But the 1st party (Rly.) challenged the order dated 02.09.2013 before the Hon'ble Gujarat High Court in Civil Application No. 11301 of 2013 in S.C.A. No. 5567 of 2004 and the Hon'ble High Court vide order dated 23.10.2013 rejected the application of the chief project manager & 2 other applicants (present 1st party in the reference case) with observation….. "The court is of the view that no clarification is required to be made in the light of the observation of this court made in paragraph-8 in order passed on 5th July 2012 in S.C.A. No. 5567 of 2004". Thereafter the 1st party's lawyer submitted written argument before this Tribunal on 22.11.2013 and its copy furnished to the 2nd party Union, then on conclusion of argument the case was kept for award.

4. The case of 2nd party as per statement of claim (Ext.11) is that employees mentioned in the schedule and other project casual labourer were recruited as skilled, semi skilled and non skilled employees within geographical sphere of Rajkot division on different dates. These project labours were transferred to different stations outside limit of Rajkot division e.g. Nadiad, Kota, Jaipur and other station as and when required. As per Hon'ble Supreme Court direction, Railway administration prepared a combined seniority list dividing employees in geographical sphere. As per direction of Hon'ble Supreme Court Rajkot division also prepared combined seniority list. Due to shifting of employees, also due to different stations also due to termination of certain employees their names were not included in this combined seniority list. Due to non – inclusion in seniority list many employees were deprived from regular posting. The Ex.Engineer (C) Ahmedabad vide their letter No. E/839/94 dated 17.08.1994 asked Dy. CE(C), Ahmedabad to submit the working particulars of affected casual labourer as these were recruited by the project to the Divisional Rly. Manager, Rajkot, the list of employees enclosed. These labourer being senior to many could not be regularised due to administrative error and these labours are still suffering where as juniors to these employees have been regularised. Further case is that the skilled labourers should be observed against skilled category without absorbing them in group D staff (list enclosed). As per existing policy as per sub para.(ii) of para. 2512 of I.R.E.M. artisan recruited should be posted in skilled category. Accordingly Bhavanagar Division of Western Railway absorbed skilled Project labour in skilled category with this statement of claim two list have been attached (1) list of 13 of labour of Nadiad reflected in the dispute. (2) list of 31 Artisan staff scale 950-1500. The 2nd party union has sought for the relief that the affected casual labourer be absorbed against the regular post from the date their juniors are posted with due seniority and to give all consequential benefit with cost and compensation.

5. As against this the case of the 1st party as per written statement (Ext.17) is that the matter referred for adjudication relates to 17 causal Labourers who were at the relevant time working as project casual labourer under P.W.I(C) of Nadiad. The subject matter referred for adjudication is for not conducting screening and regularisation of 17 project casual labourers working under P.W.I.(C) at Nadiad by DRM(E) Western Railway, Rajkot. All these 17 project causal Labours are initially recruited within geographically jurisdiction of DRM(E) W. Rly. Rajkot and at present they are on the roll of Chief Project Manager, Western Railway, Ahmedabad. The dispute referred for adjudication is with respect to 17 Project Casual labourers and so this Tribunal is not empowered to decide or deal with the other project casual labourer. As per S/c, Name of 13 project casual labourer showing in schedule in attached and the dispute is to be determined as to 13 project casual labourers and the dispute for others have not been raised nor referred by the Government of India for adjudications. Further contention is that it is not correct to say that Supreme Court in the case of Indrapal Yadav gave direction to prepare combined seniority list dividing employees in geographical sphere. Rather as per directives of the Hon'ble Supreme Court and also on the basis of the said

letter dated 11.09.1986 was issued by Railway Board to each Zonal Manager to prepare seniority list of project causal labourers with following guide line.

(A) Each zonal Railway is directed to prepare the seniority list of project causal labour for each division i.e. Division wise seniority list to be prepared for project causal labourers.

(B) Unskilled Causal Labourers will be treated as on category of unskilled.

(C) Semi skilled and skilled Causal Labours will be treated tradewise.

(D) Senoirity list to be recasted by Zonal Railway/ Constructions/Railway Administration in the aforesaid manner.

(E) Seniority list to be as on 01.04.1985 position and also to cover those Causal Labours who have been in employment at any time from 01.01.1981 and onwards.

Further case is that the Railway Board's letter dated 02.03.1987 was addressed to G.M. of each zone and was circulated by G.M. W. Rly. Vide letter dated 12.03.1987, and a chance was given to project casual labourers to empanel their names in seniority list for want of further work or on completion of work and such casual workers had to submit on or before 31.03.1987 application to concern Div. office. The seniority list of project casual labourers prepared by DRM(E) Rajkot. W.Rly. project and published on vide letter No. DRM(E) RJT.dated 24.12.1987. In this seniority list names of concerned project casual labourer who were in employment/initially employed as project casual labourers in geographical jurisdiction of Rajkot Division. Para 5 of S/c is not correct to say that the said project casual labourers service were terminated due to shifting the said project Causal Labourers on completion of the work or non-availibity of work do not suffer starvation, rather they have been shifted to other places afresh where work is in progress and as their names were not in the combined seniority list, with regard to para 6 of S/c it is contended that the action of non-inclusion in seniority list by Rajkot Division not be deprived them from regular posting as averred in the said para and accordingly denied para 6. With regard to para 7 of S/c it is stated that allegation is not true that there is administrative error of first party (W.Rly). The allegations in para 8 &9 of the S/c are denied and replied in this way that Railway Board's latter dated 08.04.1997 has got statutory force and this tribunal is not empowered to modify it. Only President of India is empowered to modify. Railway Board's letter issued guidelines for regularisation of project casual labourers as follows:

(A) Project Casual labourer working in construction as class 'C' scale be regularised in group 'D' post on Division and that in case those Causal Labours are in need in construction they may be continued as group 'C' work charged post in construction and would be adhoc promotion basis. The office of G.M. Western Rly. Issued guidelines in connection with regularisation of project casual labourers working in group 'C' scale vide letter dated 08.06.1998.

(a) Casual labourers in group 'C' scale whether they are diploma holder or have other qualification may be given a chance to appear for examination conducted by Railway Recruitment Board or the Railway for the posts as per their suitability and qualifications without any age bar.

(b) Not with standing above, such of the casual labourers in Group 'C' scale as are presently entitled for absorption as skilled artisan against 25% of the promotion quota may continue to be considered for absorption as such.

(c) Not with standing (a) or (b) above, all casual labourers may continue to be considered for absorption Group 'D' on the basis of number of days put in as such casual labourers respective units.

Further case is that the issues of regularisation of project casual works in Group 'C' were raised before the several central Administrative Tribunals holding that a casual labourer in Railway can be regularised in Group 'D' only. There can be no direct regularisation of casual labourers against group 'C' posts/ A casual labourer can be promoted in group 'C' scale , only on being regularised in group 'D. The stand of the 1st party is that the concerned 17 project casual labourer had already been regularised as per the instructions laid down by G.M. Western Railway, in consonance with Railway Board's decision. And so, the issue with regards to regularisation of 17 project casual Labourers under reference is already settled and therefore the matter referred for adjudication is infructuous. On these grounds, it is stated that the present dispute referred for adjudication had already been decided by CAT and project casual labourers have been given benefits and so the reference is not maintainable and is fit to be rejected with costs.

6. In view of the rival contentions of the parties in respective pleadings as also in view of the order dated 05.07.2012 passed by the Hon'ble Gujarat High Court in S.C.A. No.5567 of 2004 with civil application no.371 of 2012 in S.C.A. 5567 of 2004, the following issues are taken for discussions and determination:-

ISSUES

(i) Is the reference maintainable?

(ii) Whether the 2nd party / union /concerned workmen have got valid cause of action?

(iii) Whether the concerned project workmen were in fact engaged as a skilled and semiskilled labours

against class 'C' position and vacancies and were actually paid wages on that basis only? Whether the workmen involved were given temporary status as group 'C'?

(iv) Whether the provision of Indian Railway Establishment Manual provide only by way of regularisation in class 'D' category and there is no scope for direct regularisation in class 'C' category of the concerned project workmen who were if engaged in group 'C' casual labourer and given temporary status in group 'C' category being skilled and semi skilled casual labourers?

(v) Whether the action of management of Divisional Railway Manager, Western Railway, Rajkot for not conducting screening and regularisation of 17 project casual labourers under P.W.I. (C) Nadiad and other project casual labourers recruited in the geographical jurisdiction of Rajkot and at present are on the rolls of Chief Project Manager, Western Railway, Ahmedabad is legal, proper and justified?

(vi) Whether the concerned project workmen's claim for being entitled to be absorbed in group 'C' category after being screened properly is justified? If so, from which date and what directions are necessary is in the matter?

FINDINGS

7. **Issue No (iii)** :- It has been argued on behalf of the 2nd party that 17 project Causal Labours were working in semiskilled and skilled category in the scale 950-1500 who are involved in this reference case among the 2nd list of artisan workers attached to the statement of claim , but now out of 17 project casual labourers only 12 are contesting for the cause that they were engaged as skilled and semiskilled casual labourers in project work in the geographical area of Rajkot Division and were granted T.S. (temporary status) in scale 950-1500 as skilled, semi skilled casual labourers class 'C' category but were not absorbed in class 'C' category, rather were wrongly absorbed in class 'D' category and they have been reverted back to class 'D' category even their names were entered in the combined seniority list of category wise of skilled and semi skilled category as per Ext. 31/6 of Divisional office Rajkot dated 15.09.1987 (list enclosed in 10 pages) with reference to CCG. Letter No E (R&T) 615/10 dated 19.09.1986 and in terms of para 5.2.1 of Railway Board's letter no. 11.09.1986 circulated under G.M. (E) CCG's letter. It has been further argued that break up of category wise skilled and semiskilled casual labourers are- Drivers, carpenter, Black smith, Sarang, Bridge fitter, painter , Air compressor driver, pipe fitter, pump driver, welder, fitter mechanic, sutar, mason and mate (semiskilled khalasi). In argument the name of 12 contesting concern workman has been given in the category of carpenter Sl. No. 9 Bhikha Kamji- Sl. No. 12 Asraf, Sl. No. 18 samsuddin and in pipe fitter Sl. No. 01, Laxman Dave, in pump driver category Sl. No. 3 Ushman Ahmed, in mason category Sl. No. 5-Deva Khira , Sl. No. 8 Ranmal Biram, Sl. No. 11-Hiralal Devsi, Sl. No. 15 Ambaam Ganesh and Sl. No. 24 Kasab Allah Rakha and in Driver Category Sl. No. 20 Shahibkhan and also name of Hargovind Ranchhoddas in male category (Semi skilled). But on scrutiny of Ext. 31/6 the seniority list prepared by Divisional office of Rajkot Division, the name of Hargovind Ranchhoddas in male category in the seniority list. So out of the 12 artisan workers in project works only names off 11 are in the seniority list of category driver, carpenter, pipe fitter, pump driver and mason who are now only in fray in this reference case and one Hargovind Ranchhor in mate category is out of court for his claim for being absorbed in class 'C' category instead of class 'D' category. It has also been argued on behalf of the 2nd party that as per list of 13 labours of Nadiad in the dispute are not contesting this reference case and in the 2nd list of 31 Artisan staff scale-950-1500, the name of Sl. No. 1,3,4,5,7,9,13,14,15,22 and 24 find place in seniority list category wise as per Ext. 31/6.

8. The second party has produced 10 (ten) documents as per list Ext.31. Ext.31 is letter dated 17.12.1990, mentioning list regarding confirmation of 'C' class staff-40% permanent construction reserve post artisan staff S&C dept. showing their date of confirmation. Ext. 31/1 is memorandum dated 05.02.1999 of office of the D.CE (C&S) department A.D.I in the subject, promotion, reservation and transfer of drivers , RJT division. This shows that Shri Laxman Narayan, Driver (T.S), Shri Bhupat Singh, Shri Kalubhai (T.S), and Shri Batukbhai Agar Singh (T.S) were promoted in the scale 4000-6000 (Rps) as Shri Natha Vashram, Pradeep and Rewa Narayan H.S driver/scale 4000-6000 (RPS) are juniors to all above said employees. This has approval of competent authority. Ext. 31/2 is office order No. 99 dated 01.09.1997 of W.Rly on the subject of regularisation of project casual workers in class iv category showing also names of 9 Artisan staff in the scale 950-1500. Ext. 31/4 is Railway Board's letter No. ENG/12/97/RC-3/4,NewDelhi dated 09.04.1997 circulated among General Manager (P) All India Railway, Zone on the sub-Regularisation of casual labourer working in Group 'C' series –giving instruction -3 (i) All casual labourer/substitutes in Group 'C' scales whether they are diploma holder or have other qualifications may be given a chance to appear in examination conducted by R.R.B. or the Railway for without any age bar. – 3 (ii) Not withstanding (i) above such of casual labourer in Group 'C' are presently entitled for absorption as skilled artisans against 25% of promotion quota may continue to be considered for absorption as such. Ext. 31/5 is extract of chapter XXV as Rule 2501 to 2513 of I.R.E.M. Ext. 31/6 is seniority list of project casual labourer of Rajkot Division dated 15.09.1987. Ext. 31/7 is western Railway H.Q. office (CCG Bombay) letter No. K/Sig/615/6/10 dated 14.02.1999 on the subject

casual labourer/substitutes Appointment Sig & telecom Dept. SB/W/shop with regard to clarification of para 2512 (ii) of chapter XXV of IREM. –I &ii skilled casual labour engaged in work charged Esst. can be straightway absorbed in regular vacancies in skilled grade provided they have passed the requisite test to the extent of 25% of vacancies reserved for departments promotion from the unskilled and semiskilled category. These orders also applied to Causal Labour who was recruited directly in the skilled categories in work charges esst. after qualifying in the trade test.

(iii) Causal Labours who have earned temporary status are required to be given all benefits as admissible to temporary employees. Ext 31/9 is order/letter dated 28.01.1991 of Divisional Office Bhavnagar on the subject Trade test N.G. staff engg. Dept carpenter scale Rs 950-1500(R.P) and regularising the artisan casual labourer (T.S) in class 'C' category. Ext.31/10 is letter dated 03.02.1992 of ALC(Central) Adipur to the D.R.M. Western Railway Rajkot to consider the demand of union (P.R.K.P.) regularising the artisan staff against 25% quota since Bhavnagar Division has regularised artisan staff in class 'C' Category after taking trade test. Locally and absorbed them in 'C' category scale. Ext.31/8 is statement showing details of service particulars of Causal Labours appeared before screening committee for absorption against 40% construction reserved post for artisan staff position as on 31.05.1985.

9. On the other hand, the 1st party has submitted 10 documents with list Ext.32, Ext.32/1 is copy of reference order of this case. Ext.32/2 is Railway Board's letters dated 11.09.1986. Ext.32/3 is letter of G.M. Western Railway, Mumbai dated 12.03.1987.Ext.32/5 is Railway Board's letter dated 09.04.1987 (given pucca Ext.41) says to give a scales to Causal Labour in group 'C' scales to appear in examination conducted by R.R.B. or the Railway for post as per their suitability. Ext.32/6 is Western Rly, Mumbai ,H.Q letter dated 03.06.1998 on the subject regularisation of Casual labourers working in group 'C' scale with reference to Railway Board's letter dated 09.04.1997. Ext. 32/7 ,32/8 and 32/9 are copy of judgment of CAT, Jaipur, New Delhi in O.A. No 501/97,1892/92 and 3217/92 respectively. Ext.32/10 is copy of judgement of Hon'ble Supreme Court in W.P. no. 548/2000 in the case of Indrapal Yadav & others vs. Union of India.

10. On behalf of 2nd party out of the 11concerned workmen in the fray one of them Shri Hiral Devsi deposed in support of case at Ext.21 that he jointed railway construction as artisan staff mason in scale Rs.900-1550 on 04.12.1971 as casual labourer and he was getting wages Rs.7000/- p.m.. He deposed that in Jamnagar his screening test of mason had been taken but others were made permanent mason but his case was not considered. In cross examination, it has come that in the year 1983 he got temporary status of mason (skilled casual labourer). The 1st party also examined its witness namely Om Prakash Ramprashad Upadhyaye working in construction department of the 1st party. He deposed at Ext.40. He deposed that temporary casual labourer can not be observed in class 3 scale. But he admitted during cross examination that the artisan staffs involved in this reference case are working in project/construction from the beginning as artisan staff class 'C' scale. He also stated that it is true that they got temporary status of class III category of casual labourer and that is the facts mentioned in the documents marked Ext.32/5 are true which is pucca Ext.41.

11. It has been argued on behalf of the 2nd party / union that the Div. Railway Manager, Western Railway, Rajkot conducted the screening of these contesting 12 artisan workmen for making them regular and permanent against the existing vacancies on his division violating the existing principle and rules of the conducting screening (1) The number of vacancies to be notified against which the screening is to be conducted , categories wise (2) Notification of the seniority list of the staff categories wise (3) The staff to be screened and allotted the same category and post, on which they are working. But these principle are violated by the D.R.M., Western Railway, Rajkot since nonotification was issued declaring the number of vacancies out of 25% quota for artisan staff fixed against which the person were to be screened (4) no seniority list was notified category wise. But the combined general seniority list of class III and class IV persons were issued and the concerned 12 affected artisan staff of this case were wrongly screened and allotted low grade post of class IV (d) in the category of Gangman scale 196-232/ 750-940. It has been further argued had the vacancies notified against which the screening was conducted, this dispute could have been avoided but it was not done,so internally to put the concerned contesting workmen in financial and status loss. Further argument is this that the 1st party has misrepresented the facts under page 3 and 8 of the W.s. (Ext.17) and mislead the facts the copy of letter dated 08.04.1997 and 08.06.1998 were not produced the combined seniority list of the construction department and the Div. Railway Manager, Western Railway Rajkot Division did not produced as per para.9 of W.s. (Ext.17) the list of person regularised.He further argued that as per Ext.32/2 page 5:2:1 (II) The skilled artisan staff are to be treated as one category but it was not done so in screening conducted under D.R.M. Rajkot No.ER/891/1/16 vol.3 of 09.09.1997. Ext.32/5 also says the policy for regularising the class III artisan worker in class III post only vide para. No. 3(i) (ii). It has been further argued that the copy of judgement of CAT Ext.32/7, 32/8 and 32/9 do not apply in this case as is the present case concerned worker were recruited on class III artisan staff. Reliance has been placed up on the case law of V.M. Chandra Vs. Union of India

(A.I.R. 1889 S.C.1624)wherein their lordship directed for making class III artisan workers Causal Labour against 25% direct recruitment. In the case law of Hussain SasamSaheb Kaladgi Vs. State of Maharastra (A.G.R 1987 S.C 1627) it was ordered that the person recruited in the post should not be reverted to the lower post. The case law reported in 1988 1 SCC 306 regularisation of service on granting T.S, 2005 11 SC.C 301 Indrapal Yadav & others Vs. Union of India -not to revert railway employee on regularisation, Union of India Vs. AshaBhai son 2003 S.C.A 715 where in case of Ram Kumar and other dealt with/ Railway has no right to take different views in different case. Summing up the argument, it has been submitted that in the instant case concerned contesting artisan workmen are to be governed by the above case laws cited since they are project artisan workers recruited directly in group 'C' Category, getting scale 950-1550 and also given T.S. and working for more than 20 years so they should be regularised in group 'C' scale after proper screening by Rajkot Division against 25% reserved quota to be duly notified with post category wise.

12. On the other hand,it has been argued by the learned counsel for the 1st party that the dispute raised by the union with regard to 17 project casual labourer who was initially engaged as class 'D' and were granted temporary status (T.S.) or completing required days of work on casual labourers class 'D' . But such argument made on behalf of the 1st party falls to the ground since as per seniority list of Rajkot Division (Ext.31/6) the 11 contesting worker who are only in the fray in this reference case on project workers are initially recruited in the scale 950-1500 grade 'C' as artisan staff- viz. mason, carpenter, driver, pipe fitter, pump driver category having scale of Rs.950-1500 more so the claim statement (Ext.11) has not been denied in the W.s. (Ext.17) that those 17 project workers out of wohom only 11-12 are contesting were initially engaged as artisan staff class 'C' category in the scale 950-1500. But in the written argument submitted by Shri H.B. Shah, Railway Lawyer on 24.11.2013 it has been submitted that the dispute raised by the union with regard to 17 project casual labourers are engaged initially class 'D' and are granted temporary status on completing required days of work as casual labourer class 'D'. The seniority list of project as casual labourer has been notified and published vide Ext.31/6 and the concerned workmen were empanelled and not submitted any grievances. The seniority list of the project casual labourer is find and accordingly their services were regularised in class 'D' group. But such written submission of the learned lawyer of the 1st party is not inconsonance with the actual state of the affairs. Ext.31/6 is seniority list of artisan staff working under jurisdiction of Rajkot Division in the category of drivers, carpenter, Sarang, Bridge fitter, painter, Air Compressor Driver, pipe fitter, welder fitter/ Mechanic, record shorter, Mason, semiskilled khalasi. As per own letter of Western Railway Dy.(ECC) West's office, Ahmedabad dated 05.12.1988, category of Blacksmith, Carpenter, Fitter Mason, Welder, Painter, Sarang, Driver are in the scale Rs 950-1500 (class III post). In the seniority list category wise 11 workmen leaving 12th person Hargovind Ranchhoddas (semiskilled mate) have been shown as Artisan staff scale 950-1500 with total days of working means they were initially engaged as Artisan staff scale 950-1500 and are getting wise of class 'C' grade but on regularisation by Rajkot Division they are degraded to class 'D' post without notifying 25% vacancies for project artisan staff category wise for having screening test etc. In Ext.32/2 there is direction for preparation of seniority test category wise (a) unskilled casual labourer(b) semi skilled casual labourer (c) skilled casual labourer treated trade wise. As per Railway Board's later dated 09.04.1997 Ext.32/5 (Ext.41) para.3(i) All casual labourer / substitutes in group 'C' scale may be given chance to appear in the examination conducted by R.R.B. or the Railway for post as per their suitability. This directive of the Railway Board was not followed in Rajkot Division in true sense where as in Bhavnagar Division vide Ext. 31/9 directivesof Railway Board and followed by Western Rly H.Q.order were followed in true scene for skilled Artisan Carpenter, Category wise screening / trade test exam.

13. As per discussion and consideration of the oral and documentary evidence, I am of the of the view and therefore find and how that as per list prepared by Rajkot Division Categories wise out of 12 contesting project workers the name of Hargovingd Ranchhoddas semi-skilled mate(Khalasi) does not find place in the seniority list of artisan staff(Ext.31/6) but the names of 11 project workers of artisan staff find place in the list (Ext.31/6) who are pump driver Usman Ahmad, engaged on 01.09.1980 days of work 1580 day Pipe fitter Laxman Dave engaged on 16.04.1979 -2050 days of work, Carpenters Samsuddin, Ashraf Mohd, and Bhikha Kangi engaged on 19.10.1983, 25.02.1980 and 22.02.1980 on days working 499, 1759 and 1819 respectively. Mason Dava Khira engaged on 17.11.1976 days of work 2889, Raman Viram, engaged on 20.10.1977 on days of work 2557, Hiralal Devasi engaged on 21.04.1977 on days of work 2051, Ambaram Ganesh engaged on 12.11.1979 on days of work 1854 and Kasab Allahrakha engaged on 18.08.1980 on days of work 1593, Driver Category- Shahibkhan w.e.f 27.11.1978, on days of work 2164. All these 11 project workers got temporary status as skilled worker(Artisan Staff) under direction of the Hon'ble Supreme Court as per Indrapal Yadav and other Vs. Union of India case (supra.). So it can be safely presumed that these 11 Artisan staff got T.S in category 'C' in which they are initially appointed/engaged Casual labourer(skilled Category) and were actually paid ways on that basis only. Thus this issue No.(III) is decided accordingly that 11 contesting concerned project worker above named were in fact engaged as skilled worker

(Labours) against class 'C' position and vacancies and are actually paid wages on that basis only and are given T.S. (Temporary Status) as group 'C'.

14. **Issue No(IV) :** As per discussion and finding to issue No-III in the forgoing paras. I find that the provision of Indian Railway Establishment Manual (IREM) do not provides only by way of regularisation of project workers engaged in class 'C' Category to be in class 'D' category rather there is scope as per Railway Board's own order (Ext-41) para -3(I) that provides scope for direct regularisation in class 'C' category being skilled/semi-skilled project worker in the scale 950-1500 by calling them in screening/trade test category wise as per notification of vacancies in 25% quota. This issue is decided accordingly against the management of the 1st(W.Rly).

15. **Issues No-V :** As per findings to issue No III & IV in the foregoings, I find and hold further that the action of the management of Divisional Railway Manager, Western Railway, Rajkot for not conducting screening and regularisation of 11 project Causal workers under P.W.I(C) Nadiad, recruited in the geographical jurisdiction of Rajkot is not legal Proper and justified since because of violating the existing principles and rule of conducting screening i.e., number of vacancies to be notified against which screening is to be conducted, categories wise. The project Artisan staff to be screened and quoted the same categories and post on which they were working but these principles were violated by the Divisional Railway Manager, W. Rly, Rajkot.

16. **Issue No VI :** As per finding above to issue no III, IV and V in the foregoings I further find and hold that the claim of 11 concerned project workers named mentioned as para.13 of this order/Award are justified to be absorbed in group 'C' category after being screened properly according to principle of natural justified and following the list category wise in true sense and if any of them or all of them succeed in screening trade test category wise, they should be absorbed in class 'C' category from the dates their juniors are observed in class 'C' category. So Rajkot Division is directed to conduct screening afresh without violating the principles of natural justice and following the direction of Railway Board's order (Ext.41) within two months of this order/ awards.

17. **Issue No. i & ii :** The reference is maintainable and 11 project workers have valid cause of action in this case.

This reference is accordingly allowed in part so far as 11 project workers (Casual labourer) engaged initially in class 'C' category as artisan staff who have got valid cause of action in this case. No. order as to any cost.

This is my Award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 29 मई, 2014

का.आ. 1639.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 18/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/84/2006-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1639.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India, and their workmen, received by the Central Government on 07/05/2014.

[No. L-12012/84/2006-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 10th day of April, 2014

INDUSTRIAL DISPUTE No. 18/2007

Between :

The General Secretary,
State Bank Employees Union,
C/o G. Krishna Murthy,
16-32, Kowtha Subba Rao street,
Poornanandampet, Vijayawada .....Petitioner

AND

The Deputy General Manager,
State Bank of India, Zonal Office,
Tirupathi ....Respondent

Appearances :

For the Petitioner : Party in person

For the Respondent : M/s. B.G. Ravindra Reddy &
Y. Ranjeeth Reddy, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/84/2006-IR(B-I) dated 12.2.2007 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the Management of State Bank of India not confirming the services of Shri M. Rama Krishna Rao, Messenger, State Bank of India, Tirupati branch w.e.f. 2.1.1981 is legal and justified? If not, what relief he is entitled to?"

After receiving the said reference and registering it as ID No. 18/2007 on the file of this Tribunal, the presence of both the Petitioner union and the Management has been secured and the claim made by the Petitioner union and the counter filed by the Management have been received.

2. **The averments made in the claim statement filed by the Petitioner union in brief are as follows:**

The workman Sri M. Rama Krishna Rao was appointed as a godown watchman at Eluru branch of the Respondent bank on 1.1.1970. After taking his service continuously for over 270 days he was retrenched without any reference to retrenchment laws. Petitioner union successfully prosecuted the dispute raised against the illegal termination of the workman. Thereafter Respondent bank has reinstated the workman into service on 10.8.1983 and posted him at its Tirupathi branch as a messenger, paid back wages granting him increments etc., from 16.1.1976, the date on which the Hon'ble Supreme Court of India gave it's historic judgement in Sundaramoney Vs. State Bank of India case. The Respondent bank took a policy decision to confirm all the reinstated workman retrospectively with effect from 2.1.1981 with a notional probation period of 6 months after an interview. The workman also was called for an interview held at Regional office of the Respondent bank on 14.4.1984. He was sent for medical examination on 11.1.1985. But he was not given appointment without disclosing the outcome of the medical examination held on 11.1.1985 he was made to undergo another medical examination in April, 1985. Even then, without disclosing result of the said examination, Respondent bank constituted a medical board at LHO, Hyderabad and got the workman subjected to yet another medical examination on 15.11.1985. Since the services of the workman were not confirmed on par with the other reinstated workmen with effect from 2.1.1981 as per the Respondent bank's circular letter No. PER No.401-3-3 dated 27.1.1984, an industrial dispute has been raised complaining that there was not only discrimination and unfair labour practice against the said workman but also he was being treated as temporary workman. During conciliation proceedings before the Conciliation Officer, Respondent bank revealed that as there were two contradictory opinions by the opthalmologists, the workman was got examined by the medical board on 15.11.1985 and since the said board diagnosed the said candidate as suffering from primary retinitis, Pigmentose, the said workman was considered as medically unfit for the post of messenger. The conciliation officer suggested the Petitioner union to pursue the issuance of medical fitness for the workman with the Respondent bank and in case of failure on their part they can reopen the dispute. Respondent bank also was suggested to give reasonable opportunity to workman to present his case. Pursuant to the said suggestions Petitioner union in right earnest taken up with the Respondent bank the matter regarding confirmation but in vain. In the mean time Respondent bank served the workman with the notice of termination from service dated 30.11.1986. The conciliation proceedings on the industrial dispute against such proposed termination ended in failure. Dispute questioning legality of the notice of termination was referred for adjudication to this Tribunal. After adjudication on the whole issue this Tribunal gave its award on 27.9.1993 in ID No.47/1987. As per the operative portion of the said award workman is entitled to be reinstated into service with full back wages and all other attendant benefits. In the said award the Tribunal stated that,

"I find all these acts as unfair labour practices and discrimination against the Petitioner workman and taken the extreme step of terminating the services of the Petitioner workman. It is also found that the Petitioner-Workman was discriminated in relation to other re-instated workmen. Thus, I am of the clear view that the Respondent bank has resorted to unfair labour practice of keeping the Petitioner –Workman temporary without confirming him in service. This Tribunal is left with no other alternative except to reinstate Sri M. Ramakrishna Rao, Messenger into service w.e.f. 30.11.1986."

It is clear that this award is emphatic in that the workman is entitled to besides reinstatement, all the benefits as applicable to the other workmen who were reinstated along with him in 1983. The Tribunal has directed the Respondent bank to give same treatment to the workmen herein in the mater of back wages and other attendant benefits as given to other workmen which includes, the benefit of confirmation as per bank's circular letter PER/No.401-3-3 dated 27.1.1984. But, the Respondent bank informed the workman through their letter dated 16.12.1993 that he would be deemed as a confirmed messenger with effect from 30.11.1986. For this there is no basis and it is in a deliberate misinterpretation of the award. Thus, the workman is forced to seek legal remedy due to the precipitate action of the Respondent bank in issuing an order of termination from service on 27.8.1987. He invoked the writ jurisdiction by filing WP No.1390/1987 and succeeded in restraining the bank from giving effect to the said termination order dated 24.8.1987 with all reveal the vindictive attitude of the bank against the workman. Finding that the Respondent bank is not amenable to reasons and as they have ignored the representation of the workman in order to get justice to him Petitioner union

had to raise yet another dispute on 4.5.2005 exclusively on the question of date of confirmation which has been duly considered by the Ministry of Labour and Employment, Government of India, New Delhi and referred for adjudication. The workman is entitled for confirmation into service with effect from 2.1.1981 as per the circular letter dated 27.1.1984 on par with the other workers who were reinstated into service along with him in the year 1983. As per the directions in the award passed in Industrial Dispute No.47/1987 also he is entitled for such confirmation. While this dispute is pending the workman retired from service on 31.5.2005 on attaining the age of superannuation. The contention of the Respondent bank raised before conciliation officer , that the issue has already been adjudicated is false. The Respondent bank is to be directed to confirm the workman M. Rama Krishna Rao in service with effect from 2.1.1981 and to grant all other attendant benefits consequent to such confirmation.

3. **Respondent bank filed their counter with the averments in brief as follows :**

As a result of the award rendered in I.D. 47/1987 the workman has been paid the back wages with effect from 16.1.1976 i.e., the date on which Hon'ble Supreme Court of India has rendered its judgement in Sundaramoney's case. The bank has taken a policy decision vide circular No.PER.401-3-3 dated 27.1.1984 to regularise and confirm the services of those workmen who have put in continuous service of 240 days or more in any 12 calendar months preceding their termination subject however to a formal interview and medical examination. While the services of all other similarly placed workmen who were found successful in interview and medical examination were confirmed with effect from 2.1.1981 services of the present workman were not confirmed as he was declared medically unfit due to progressive ocular diseases Retinitispigmentosa. Since he was declared medically unfit the bank proposed to dispense with his services on the said ground with effect from 9.10.1986. Petitioner raised and industrial dispute which was referred for adjudication to this Tribunal. On adjudication of the said dispute the award has been passed in ID No. 47/1987 dated 27/9/1993. In the said award the claims raised by the same Petitioner on same issues in letter and spirit were considered and the workman was reinstated into service with effect from 30.11.1996 with full back wages and all attendant benefits as per the direction in the said award. On the very same issues the present dispute is raised and therefore it is untenable. The allegation that the award is emphatic in that the Petitioner is entitled to besides reinstatement all the benefits as applicable to the other workmen reinstated along with him in 1983 are all misconceived and nothing but misinterpretation of the award of the Tribunal. The said award is very clear in respect of both the aspects i.e., reinstatement as well as attendant benefits as it is clearly stated that the workman is to be reinstated with effect from 30.11.1986 with full back wages and attendant benefits. The bank has implemented the said award in letter and spirit. That is why only Petitioner has kept quiet all these years. Present dispute is an after thought. That too after retirement of the workman. The issues which are already adjudicated can not be seek to be reopened. Petitioner is estopped from raising the same issues once again by application of doctrine of res judi cata. Further the claim is time barred. Sec.11 of civil procedure code is applicable to the industrial disputes as well. Hence, the claim is to be dismissed.

4. **Petitioner union filed a rejoinder with the averments in brief as follows :**

The attendant benefits in the context of the observation of this Tribunal at para 10 of the award in I.D. 47/1987 include confirmation with effect from 2.1.1981. While the workman was entitled to be confirmed in service with effect from 2.1.1981 along with others, Respondent bank confirmed him only with effect from 30.11.1986. It is this that constitutes the present reference before this Tribunal. Inspite of the specific observations of this Tribunal in para 10 of the award dated 27.9.1993 in I.D No.47/1987 the Respondent bank kept the workman temporary till 29.11.1986 without confirming him from 2.1.1981 as done in the case of other reinstated workmen. The same can not be termed as implementing the award in letter and spirit. Due to non-confirmation of the workman services with effect from 2.1.1981, he was denied several benefits and it resulted into artificial degradation of his seniority. His non-admission to provident fund with effect from 2.1.1981 resulted in loss of PF contribution for about 6 years i.e., from 2.1.1981 to 30.11.1986. He is denied admission to the pension fund also from 2.1.1981 resulted in substantial reduction in fixation of his pension. He was entitled to promotion as Duftry, Duffadar and Head Messenger in the sub-ordinate cadre but was denied of the same. He was selected for the clerical cadre post of record keeper and cashier in 2002 but, said promotion was denied to him on the alleged ground that he was medically unfit. All his actions are indicative of vindictiveness on the part of Respondent bank.

5. To substantiate the contentions of the Petitioner, the workman was examined as WW1 and Ex.W1 to W16 were marked. On behalf of the Management MW1 was examined and no documentary evidence was adduced.

6. Heard the arguments of either party. Written arguments were also filed for either party and the same are considered.

7. **The points arise for determination are :**

I. Whether the award passed in ID No. 47/1987 operates as res judi cata for the present proceeding?

II. Whether the workman Sri M. Rama Krishna Rao is entitled for confirmation of his services with effect from 2.1.1981?

8. **Point No. I :**

It is an admitted fact that I.D. 47/1987 arose from the reference made by the Government of India, Ministry of Labour and Employment, New Delhi requiring the Central Government Industrial Tribunal cum Labour Court, to adjudicate upon the legality or otherwise of the termination notice dated 9.10.1986 issued by the Respondent bank proposing to terminate the services of the workman with effect from 30.11.1986. On adjudicating the said dispute the Tribunal has rendered its award dated 27.9.1993 in I.D. 47/1987. Ex.W12 is the copy of the said award published in the gazette of India. Whereas present reference is made for adjudication of the dispute i.e.,

> "Whether the action of the Management of State Bank of India not confirming the services of Shri M. Rama Krishna Rao, Messenger, State Bank of India, Tirupati branch w.e.f. 2.1.1981 is legal and justified? If not, what relief he is entitled to?"

Thus, one can clearly see that the dispute adjudicated in I.D. 47/1987 and the present dispute are totally distinct and different. In ID No. 47/1987 the dispute adjudicated upon is the legality or otherwise of the notice issued by the Respondent bank on 9.10.1986, proposing to terminate the services of the workmen with effect from 30.11.1986 whereas, the dispute now sought to be considered in this case is the reasonableness and legality of the action of the Respondent bank in not confirming the services of the workman with effect from. 2.1.1981.

9. In the given circumstances, one can see that at any stretch of imagination the proceedings of I.D.No. 47/1987 do not operate as res judi cata for the present proceedings.

This point is answered accordingly.

10. **Point No. II :**

It is an admitted fact that Petitioner has been reinstated into service on 10.8.1983 along with several other workmen who were all retrenched earlier, as a result of Petitioner union successfully prosecuting the dispute raised against such retrenchment. That means, all these workmen including the present workman Sri M. Rama Krishna Rao are on par with each other and are standing on one and the same footing.

11. It is also an undisputed fact that Respondent bank took a policy decision to confirm all the workmen who completed continuous service of 240 days and more in any 12 calendar months preceding their termination subjected however to a formal interview and medical examination and confirmed such persons' services with effect from 2.1.1981.

12. As far as the present workman is concerned, though he was called for interview and medical examination, as he was similarly placed to the other workmen whose services were confirmed with effect from 2.1.1981, he was denied such confirmation and on the other hand his services were proposed to be terminated on the ground that he was medically unfit. The said decision was challenged in the proceedings of I.D No. 47/1987. It is an admitted fact that Ex.W12 is the copy of the award dated 27.9.1993 rendered in ID 47/1987, published in Government of India gazette. By virtue of this award, the Respondent bank was directed to reinstate the present workman into service with effect from 30.11.1986 with full back wages and all other attendant benefits.

13. The effect of the award rendered in I.D.47/1987 which became final and is binding on the Respondent bank, is that the contention of the Respondent bank that the workman is medically unfit is not an acceptable contention. Further, as per this award, the workman become entitled for all attendant benefits consequent to his reinstatement into service. Consequent to his reinstatement into service with effect from 30.11.1986, he is to be deemed as in continuous service of the Respondent bank on par with other workmen who were confirmed in service with effect from 2.1.1981 as he was also called for interview and medical examination in adherence to the circular letter dated 27.1.1984. While giving effect to the award dated 27.9.1993 rendered in I.D. 47/1987, Respondent bank ought to have extended all benefits to the workman herein on par with the other workmen who were similarly placed and whose services were confirmed with effect from 2.1.1981.

14. But they confirmed his services only w.e.f. 30.11.1986. The Respondent bank is not coming out with any specific reason why they discriminated the present workman and confirmed his services only with effect from 30.11.1986. Their contention that they implemented the award rendered in I.D. 47/1987 by letter and spirit is not at all correct. If they have done so, they would have confirmed the services of the present workman with effect from 2.1.1981. Thus, Petitioner is entitled for such confirmation of his services.

15. No doubt, the Petitioner has raised the dispute somewhat belatedly. But, the contention of the Respondent bank that dispute has been raised after the retirement of the workman is not correct. It was raised at the fag end of his service. The Industrial Disputes Act, 1947 is not prohibiting the workman to raise such industrial disputes belatedly. This may be in consideration of the disadvantageous position in which the workmen are placed socially and economically. Therefore, on the ground of delay the relief can not be denied.

16. In view of the fore gone discussion of the material on hand, it can safely be held that Sri M. Ramakrishna Rao, the workman is entitled for confirmation of his services as Messenger from 2.1.1981 and also all consequential benefits.

This point is answered accordingly.

Result :

In the Result, the reference is answered as follows:

The action of the Management of State Bank of India in not confirming the services of Sri M.Rama Krishna Rao,

Messenger, State Bank of India, Tirupathi Branch, with effect from 2.1.1981 is neither legal nor justified. The services of the said workman shall be confirmed with effect from 2.1.1981 forthwith. The said workman is entitled for all the benefits consequent to the said confirmation of the services. Respondent shall extend all such benefits to the workman forthwith.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 10th day of April, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1 :	MW1 :
Sri M. Rama Krishna Rao	Sri N. Rama Subrahmanyam

Documents marked for the Petitioner

Ex.W1: Photostat copy of circular No. PER No. 401-3-3, dt. 27.1.1984 dt. 27.1.1984

Ex.W2: Photostat copy of representation of WW1 dt. 11.4.1984

Ex.W3: Photostat copy of RM's sanction lr dt. 11.1.1985 advising particulars of basic pay, increment etc.

Ex.W4: Photostat copy of representation of Petitioner union reg. confirmation of WW1 dt.30.9.1985

Ex.W5: Photostat copy of representation to the ALC(C) about non-confirmation of the workman dt. 16.12.1985

Ex.W6: Photostat copy of lr. to the Respondent by Petitioner union dt. 3.8.1986

Ex.W7: Photostat copy of representation of Petitioner union to the ALC (C) dt.3.10.1986

Ex.W8: Photostat copy of FOC report dt. 21.1.1987

Ex.W9: Photostat copy of representation of the Petitioner union to the Ministry of Labour and Employment dt. 27.8.1987

Ex.W10: Photostat copy of WW1's representation dt. 24.9.1987

Ex.W11: Photostat copy of notification for the award in ID No.47/1987 dt. 12.10.1993

Ex.W12: Photostat copy of award in ID No.47/1987 dt. 6.11.1993

Ex.W13: Photostat copy of Respondent's lr. dt. 16.12.1993 reg. reinstatement of the Petitioner workman

Ex.W14: Photostat copy of representation of WW1 to the Respondent bank dt. 24.8.1996

Ex.W15: Photostat copy of representation by the Petitioner union dt.4.5.2005

Ex.W16: Photostat copy of FOC report No.7(13)/2005. E2 dt. 9.5.2006

Documents marked for the Respondent

NIL

नई दिल्ली, 29 मई, 2014

का.आ. 1640.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पूर्व तट रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 45/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/5/2014 को प्राप्त हुआ था।

[सं. एल-41012/47/2012-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1640.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of East Coast Railway, and their workmen, received by the Central Government on 28/05/2014.

[No. L-41012/47/2012-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present : Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 45/2013

(Lok Adalat)

Date of Passing Award – 27th December, 2013

Between : The Sr. Divisional Operating Manager,
East Coast Railway,
Khurda Road,
At./Po. Jatni, Dist. Khurda,
Khurda (Orissa)

...1st Party-Management

And

Their workman represented through the
District Secretary,
Bharatiya Mazdoor Sangha,
Khurda District, VA/23/3,
Ashok Nagar, Bhubaneswar (Orissa)

...2nd Party-Union

Appearances :

Shri Sashi Kanta Mohanty, : For the 1st Party Management.

None : For the 2nd Party Union.

ORDER

Case taken up before Lok Adalat. Authorized representative for the 1st Party-Management is present. The 2nd Party-Union has not responded despite sending notice for today.

2. From the record of the case it transpires that the 2nd Party-Union has not appeared on any of the dates fixed in the case so far despite sending notice through ordinary as well as registered post on 5.9.2013 and 22.10.2013 respectively which makes it abundantly clear that the 2nd Party-Union has got no interest in the case. It might have left the case un-settled either due to loss of record or its un-traceability. The 2nd Party-Union, if has any claim against the 1st Party-Management, it must have pursued the matter after reference by the Central Government. But by its conduct it appears that the 2nd Party-Union does not want to pursue the matter any further. Therefore, in the circumstances of the case, the case cannot be kept pending for long and a no-dispute award is to be passed. Accordingly a no-dispute award is passed.

3. The reference is decided in the above terms.

Dictated & Corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 29 मई, 2014

का.आ. 1641.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकता के पंचाट (संदर्भ संख्या 14/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/5/2014 को प्राप्त हुआ था।

[सं. एल-12011/31/2008-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th May, 2014

S.O. 1641.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the Industrial Dispute between the management of Punjab National Bank, and their workmen, received by the Central Government on 29/05/2014.

[No. L-12011/31/2008-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 14 of 2008

Parties : Employers in relation to the management of Punjab National Bank

AND

Their workmen

Present : JUSTICE DIPAK SAHA RAY, Presiding Officer

Appearance :

On behalf of the Management : None

On behalf of the Workmen : None

State : West Bengal Industry : Banking

Dated : 24th April, 2014

AWARD

By Order No. L-12011/31/2008-IR (B-II) dated 19-6-2008 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

> "Whether the action of the management of Punjab National Bank, Kolkata by discontinuing the variable DA on special allowance of Rs. 7 and Rs. 13 payable to the Clerk-cum-Cashiers of the erstwhile New Bank of India (ENBI) presently employed in Punjab National Bank as per the service conditions as mentioned in their respective appointment letters is justified? If not, what relief the concerned workmen are entitled?"

2. When the case is taken up today for hearing, none appears on behalf of either of the parties. It appears from the record that none appeared on behalf of the union/ workment on two consecutive dates. Considering the above facts and circumstances and the conduct of the union, it may reasonably be presumed that the union does not want to proceed with the case further. Perhaps, the dispute between the parties has been settled amicably.

3. Accordingly, the instant reference is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,
The 24th April, 2014

नई दिल्ली, 30 मई, 2014

का.आ. 1642.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नर्मदा मालवा ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 144/92) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/05/2014 को प्राप्त हुआ था।

[सं. एल-12012/63/92-आईआर (बी-III)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1642.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 144/92) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Narmada Malwa Gramin Bank, and their workmen, received by the Central Government on 30/05/2014.

[No. L-12012/63/92-IR (B-III)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/144/92

PRESIDING OFFICER : SHRI R. B. PATLE

Shri Sudhir Kumar Gupta,
62, Hatampura, Mohd. Patel Marg,
Khandwa, MP .....Workman

Versus

Secretary,
Narmada Malwa Gramin Bank,
Pradhan Karyala- 201,
Arket Silver, Near Shop No.56,
New Plasiya, Indore .....Management

AWARD

Passed on this 12th day of May 2014

1. As per letter dated 30-6-92 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12012/63/92-IR(B-3). The dispute under reference relates to:

> "Whether the action of the management of Nimar Kshetriya Gramin Bank in dispensing with the services of Shri Sudhir Kumar Gupta w.e.f. 31-5-86 is justified? If not, to what relief the concerned workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/1 to 5/2. Case of workman is that he was employed by IInd party on 1-6-84. He was transferred to Dhulkot branch and working in branch office Goul sailani when his services were terminated on 31-5-86. That he had put continuous service more than 1 year defined under Section 25(B) of I.D. Act. Though he was designated as Officer, he was performing clerical duty as such he is covered as workman under I.D. Act. that he was not paid retrenchment compensation or wages neither he was paid wages in lieu of notice before termination of his service as per Section 25-F of I.D. Act. That IInd party issued pay slip amounting to Rs. 4050 i.e. Rs. 2700 wages for two months notice and Rs.1350 as retrenchment compensation. However he collected said amount on 3-6-1986. He further submits that he not rendered surplus in Bank. His services are terminated under Section 25-G of I.D. Act, principles of last come first go were violated. Junior employee namely Shri Raj Singh Chouhan and others were continued in service. IInd party violated Section 25-F of I.D. Act as six persons namely Shri Manohar Singh Sarsodia and 5 others were appointed after his termination. On such ground, workman prays for his reinstatement with back wages.

3. IInd party filed Written Statement at Page 11/1 to 11/4. IInd party raised preliminary objection when Ist party workman is not covered under Section 2(1)(s) of I.D. Act. Ist party was appointed on promotion for 2 years in managerial capacity. He was doing duties of Manager. Therefore reference is liable to be rejected. That Ist party was offered appointment as per letter dated 8-5-84 for appointment in the post of officer. The probation was of 2 years subject to satisfactory record and antecedents. He could be confirmed in service. The Bank at its sole discretion without assigning reason to terminate his service, Ist party agreed to the terms and conditions of appointment letter and executed and delivered to the non-applicant a service bond on 23-5-84 and joined services from 1-6-84. The services of workman ended in accordance with terms and conditions in the bond. It is reiterated that reference is not tenable as Ist party is not covered as workman under I.D. Act. That Ist party was performing managerial duties at various branches. Violation of Section 25-F of I.D. Act is denied. The services of Ist party were terminated as per contract. By way of amendment by terminating services of Ist party workman the amount was paid. Workman did not collect till 31-5-86. That termination of service is according to the conditions of contract. Termination of his service is not illegal. On such grounds, IInd party prays for rejection of claim.

4. Workman filed rejoinder at Page 13/1 to 13/2 reiterating that though he was appointed as officer, he was performing duties of clerical nature. Principles of last come first go was violated.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether it is proved as Ist party is workman under Section 2(s) of I.D. Act?	In Negative
(ii)	Whether the action of the management of Nimar Kshetriya Gramin Bank in dispensing with the services of Shri Sudhir Kumar Gupta w.e.f. 31-5-86 is justified?	In Affirmative
(iii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. The award was passed by my predecessor on 15-2-96 against workman. It was held by my predecessor that Ist party is not covered under Section 2(s) of I.D. Act and Tribunal has no jurisdiction to decide justification of termination of his service. The award was challenged in Writ Petition No.1409/96 . His Lordship set aside the award and remanded matter to this Tribunal for deciding afresh. The parties are in dispute whether Ist party Sudhir Kumar Gupta is covered as workman under Section 2(s) of I.D. Act. Workman filed affidavit of his evidence stating that he was appointed as officer on 8-5-84. He had taken charge on 1-6-84 at Khargone branch and thereafter working at Gol Selani branch. That after termination of service, IInd party had issued duty list and seniority list in his cross-examination workman says appointment order Exhibit M-1 was issued to him on his application dated 8-5-84. He was holding post of officer from 1-6-84 to 31-5-86. As he was working as Officer, the progress report of subordinate was sent by him to Head Office. His progress report was sent by his senior. That leave application of Badri was forwarded by him. he had forwarded matter of one Tarachand. He says that he was not having managerial powers. Amount of Rs. 1000 was passed by him. Document 14/20. After loan was sanctioned to Tarachand, loan was paid by him. For loan agreement, order was obtained from Head Office. The court fees stamp for loan agreement was given by him. He has sent cash memo register. He denies that he is not covered as workman but falls in officers category. The document Exhibit M-1 is appointment letter containing terms and conditions subject to satisfactory completion of probation period. Document Exhibit M-2 shows that the appointment of Ist party workman was on probation for period of 2 years. Several conditions are mentioned in said document. Exhibit M-3 is report of Ist party submitted by Superintendent. Exhibit M-4 is bond executed by Ist party. Exhibit M-5 is copy of attendance register. M-6 is report submitted by Ist party regarding G.N. Petoda subordinate working under him. Thus Ist party workman working as Manager had written monthly return about his subordinate Shri G.N. Patoda. Leave application by Badrinarayan Exhibit M-6 was also addressed to workman. M-9 is signed by 1st party as Manager of Salani branch. M-10 is loan application of Tarachand. Exact role of Ist party is not clear from said document. From evidence on record, it is clear that workman was appointed as officer on probation. He was posted as Branch Manager. He has submitted report of his subordinate Shri G.N. Patoda. Leave application was also forwarded to him. Considering the evidence contentions of 1st party that he is not covered as workman under Section 2(s) of I.D. Act cannot be accepted. Section 2(s) provides-

> "Workman means any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute, but doesnot include any such person –
>
> (i) Who……..
>
> (ii) Who…….
>
> (iii) Who is employed mainly in a managerial or administrative capacity"

1st party workman was working as Branch Manager and therefore he is not covered under Section 2(s) of I.D. Act. For above reasons, I record my finding in Point No.1 in Negative.

7. In view of Ist party is not covered as workman under Section 2(s) of I.D. Act, this Tribunal has no jurisdiction to decide justification of termination of services of 1st party workman. Besides above I may mention that at the time of termination of service, 1st party was paid amount one months pay in lieu of compensation and two months pay towards retrenchment. Therefore also the termination of his services cannot be said in violation of Section 25-F of I.D. Act. For above reasons, I record my finding in Point No. 2 in Affirmative.

8. In the result, award is passed as under:-

> "Ist party is not covered as workman therefore this Tribunal has no jurisdiction to decide justification of termination of services of Ist party."

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1643.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 149/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/131/2003-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1643.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 149/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of Indore, and their workmen, received by the Central Government on 28/05/2014.

[No. L-12012/131/2003-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/149/2003

PRESIDING OFFICER : SHRI R. B. PATLE

General Secretary,
Daily wages Bank Employees Association,
9, Sanswer Road, Ujjain .....Workman/Union

Versus

General Manager (Operations),
State Bank of Indore,
Merged as State Bank of India
Local Head Office,
Hoshangabad Road,
Bhopal .....Management

AWARD

Passed on this 24th day of April, 2014

1. As per letter dated 14-8-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/131/2003-IR(B-I). The dispute under reference relates to:

> " Whether the action of the management of General Manager (O), State Bank of Indore (merged as State Bank of India) in terminating and not regularizing the services of Shri Lakshman Kumar and not paying him bonus is justified? If not, what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. workman filed statement of claim at Page 2/1 to 2/7. Workman submits that he was engaged on daily wages Rs.35/- for work of cleaning, sweeping in Bhanpura branch of State Bank of Indore he was engaged on 10-3-97 and continued to work till 15-4-00 after transfer of Branch Manager. Certificate about his working was issued by Branch Manager. He further submitted that after transfer of Branch manager, Dewasthali is successor of Mr. Korthari was obtaining signature of payment of wages in name of different persons. Workman submits that he completed more than 240 days continuous service preceding 12 months of his termination. His services are terminated without notice or paying retrenchment compensation. He has raised dispute before ALC. After the dispute was raised, show-cause notice was issued for violation of Section 25-F of I.D.Act. workman was again allowed to work from 8-12-2000. Workman had continuously worked till 9-6-03. Workman submits that he had completed 240 days, he is covered as workman under Section 25 B of I.D.Act, his services are terminated in violation of Section 25-F , G of I.D.Act, that the workman was not paid bonus as per Section 8 of Payment of Bonus Act. Workman prays for his reinstatement with 18% interest.

3. Workman has further referred to letter dated 6-8-90 of Ministry of Finance, Govt. of India prohibiting casual employment. Bipartite settlement providing absorption of casual labour.

4. IInd party filed Written Statement at Page 4/1 to 4/5. IInd party denied employer employee relationship. Workman was not employee of the Bank. He was not appointed following recruitment process, his name was not sponsored through Employment Exchange. The Bank has procedure for appointment of messengers, peon following recruitment process after advertising in news paper calling names from Employment Exchange, such procedure is not followed. Workman had not completed 240 days continuous service. He was intermittently engaged. As per exigencies, his services were utilized for 1-2 hours. Wages were paid to him. Engagement of workman is not covered under Section 2(oo) of I.D.Act. If workman is absorbed, it amount to back door entry in service. IInd party denied violation of Section 25-F, G, H of I.D.Act. On such grounds, IInd prays for rejection of claim of workman.

5. Workman filed rejoinder at Page 9/1 to 9/3 reiterating his contentions in statement of claim. That he had completed 240 days continuous service, his services were terminated without notice, without paying retrenchment compensation.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of General Manager (O), State Bank of Indore in terminating and not regularizing the services of Shri Lakshman Kumar and not paying him bonus is justified?	Termination of services of workman is illegal.
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. Though the terms of reference relates to termination not regularization of Ist party workman, non-payment of bonus to him, the workman has filed documents about payment of bonus. The claim of workman w.r.t. non-payment of bonus appears not prosecuted. Workman in his evidence on affidavit has stated that he was working with IInd party from 10-3-97. He was continuously working for 579 days till 19-6-99. He raised dispute before ALC, Bhopal on 8-12-2000 during pendency of conciliation proceeding.

IInd party violated Section 33 of I.D.Act. his services were terminated from 8-2-2000 without notice, without paying retrenchment compensation. In his affidavit of evidence, he has further stated that after show-cause notice for violation of Section 33 of I.D.Act was received, he was reinstated from 23-7-02. His services were discontinued from 13-6-02. The working of workman after show-cause notice issued by ALC, Bhopal was under the orders of Competent Authority. Workman in his cross-examination says 3 regular peons were working in the branch namely Shri B.K.Vyas, T.S.Thakur and M.C.Upadhyay. He had not appeared any examination for selection. He was opening branch, he was taking files from table to other table. He was received wages Rs. 35 per day. He was working 3-4 hours per day. He was receiving wages for six days in a week. In Document Exhibit W-1, working days of workman during the period 3-3-97 to 19-6-99 are shown 579 days. It corroborates evidence of workman that he completed 240 days continuous service preceding his termination by IInd party. Document Exhibit W-2 reply filed before ALC. It is specifically stated that workman was engaged as casual labour, he was doing work of filling water. The wages were paid to him for working days. IInd party had assured payment of bonus to workman. Exhibit W-3 is show-cause notice. Exhibit W-4 is reply given by management before ALC. IInd party had advised Branch Manager to restore workman as prevailing from 8-12-2000. Exhibit W-5 is letter given by IInd party discontinuing services of workman from 13-6-02. The documentary evidence discussed above corroborates evidence of workman that he was working in the Bank for more than 240 days continuous service.

8. Management's witness K.J.Mohite filed affidavit of evidence but he has not appeared for cross-examination. Rajendra Singh, Management's witness supported contentions of IInd party management. That workman was not appointed in the bank. It is denied that workman was continuously working from 10-3-97 to 8-2-2001. Witness of management has stated that workman was engaged for cleaning work. He was working one hour morning and one hour evening. Workman was not appointed after following recruitment process. In his cross-examination, witness of management says that he was not working in branch during 1997 to 2003. His affidavit of evidence is filed on the basis of record. He had seen Form B register, Attendance register before filing the affidavit. No documents are available about workman was engaged with prior permission of authorities. He claims ignorance about the letter given by ALC. Workman was not paid compensation before termination of his service. If evidence of workman and management's witness Rajendra Singh are considered, the evidence of workman is supported by document whereas evidence of management are not supported. He was not working at relevant period. Though the evidence is based on document, the documents about attendance, payment sheet etc. are not produced. Document W-1 clearly shows workman had worked more than 240 days preceding his termination. His services are terminated without notice, without paying retrenchment compensation. On such ground, IInd party has violated Section 25-F of I.D.Act. Therefore I record my finding on Point No.1 accordingly.

9. As per terms of reference, regularization in service is also referred. The evidence of workman shows that he had not appeared for examination for selection of candidates. Management's witness has also stated about it. Workman was engaged after following selection process. Workman was engaged as casual labour. Document P-6 is copy of settlement dated 13-7-93 as a one time measure, the employees were allowed opportunity for absorption on permanent basis. The employee who had completed 240 days service during 12 consecutive months, list of temporary employees were prepared. Workman was not working in the Bank in 1993 as he was not in employment of the Bank. Workman cannot get absorption as per said settlement. The claim for regularization of workman is opposed by IInd party.

10. Learned counsel for IInd party Shri Tripathi relies on ratio held in

Case of Madhya Pradesh Administration versus Tribhuban reported in 2007(9) Supreme Court Cases 748. Their Lordship of the Apex Court dealing with the relief to be given on non-compliance with Section 25-F of I.D.Act held distinction between relief to be granted to daily wager who doesnot hold a post and to a permanent employee are to be considered that at one point of time reinstatement with full back wages used to be automatically granted, a change in the said trend is now found in recent decisions of Supreme Court. Workman was granted compensation Rs. 75,000.

In case of Rajkumar versus Jalagaon Municipal Corporation reported in 2013 (2) Supreme Court Cases 751, their Lordship of the Apex Court considering single judgment and Division bench of the High Court recorded a finding that appellants were temporarily appointed on daily wages as and when work was available and not posted on regular basis against any sanctioned post. There was no reason to interfere with the orders refusing to set aside termination.

In case of Chandra shekhar Azar Krishi Evam Prodyogiki Vishwavidyalaya versus united Trades Congress and another reported in 2008(2) Supreme Court Cases 552, their Lordship held that working for more than 240 days continuously from the date of engagement by itself doesnot confer any right upon a workman to be regularized in service.

As the workman was engaged on daily wage without following recruitment process, reinstatement cannot be justified. On the point of burden of proof reliance is placed on ratio held in 2009(11) Supreme Court Cases 522, 2006(2) Supreme Court Cases 716. The detailed discussion of ratio in those cases is not necessary in view in document Exhibit W-1 579 working days of workman are shown.

11. Shri Ram Nagwanshi Union Secretary relied on ratio held in Case of Samishta Dube and City Board Etawah and another reported in 1999(81) FLR 746. Ratio held in the case is in absence of any agreement between the employeor and the workman on behalf the employer shall ordinarily retrench the workmen who was the last person to be employed.

In case of Jaipur Development Authority versus Ramsahai and another reported in 2007(1) Supreme Court Cases (L&S) 518, their Loreship held Section 25-G, H of I.D.Act requirement of continuous work in terms of Section 25-B held the same is not necessary.

In present case, from pleading and evidence workman has not made out ground of any other person engaged after termination of his service, violation of Section 25-G, H is not made out. Workman was working from 1997 to 2001 approximately 4 year. He was engaged on daily wages as casual employee. Considering above aspects, in my considered view, compensation Rs.50,000 would be appropriate and shall meet the ends of justice. Accordingly I record my finding in Point No.2.

12. In the result, award is passed as under:-

(1) The action of the management of General Manager (O), State Bank of Indore (merged as State Bank of India) in terminating and not regularizing the services of Shri Lakshman Kumar is illegal.

(2) IInd party is directed to pay compensation Rs.50,000 to the workman within 30 days from the date of publication of award.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1644.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 132/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/102/2005-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1644.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 132/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of Indore, and their workmen, received by the Central Government on 28/05/2014.

[No. L-12012/102/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/132/2005

PRESIDING OFFICER : SHRI R. B. PATLE

General Secretary,
Daily wages Bank Employees Association,
9, Sanwer Road, Ujjain

.....Workman/Union

Versus

General Manager (Operations),
State Bank of Indore,
Merged as State Bank of India
Local Head Office,
Hoshangabad Road,
Bhopal

.....Management

AWARD

Passed on this 25th day of April 2014

1. As per letter dated 1-12-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/102/2005-IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of General Manager (O), State Bank of Indore, Indore in terminating the services of Shri Kamal Damodare w.e.f. 1-4-2002 is justified? If not, what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/2 to 5/5. Case of workman is that he was engaged as peon on 1-9-95 by Branch Manager, MG Road, Indore at wages Rs.20/- per day. The wages were increased to Rs. 30, 40, 50. He was rendering his services satisfactorily. The workman was paid wages in different names like Suresh, Santosh, Mukesh, different kinds of bills were drawn. That he completed 240 days continuous service

prior to termination of his services on 1-4-02. That his services were terminated without notice though retrenchment compensation was paid to him. That he is covered as workman under Section 25 B of I.D.Act. His services were terminated without notice, retrenchment compensation was not paid to him. That he is covered as workman under Section 25 B of I.D.Act. His services are terminated in violation of Section 25-F, G, H of I.D.Act. On such grounds, workman prays for his reinstatement with consequential benefits.

3. IInd party Written Statement at Page 10/1 to 10/10. IInd party denied claim of workman. It is submitted that workman had not completed 240 days service preceding his termination, he is not covered as workman under I.D.Act. the reference is not liable. There is no employer employee relationship. That Ram Nagwanshi is a dismissed employee. He claimed to be General Secretary of Dainik Vetan Bhoti karmchari Union. He is not competent to represent workman in the reference.

4. It is further submitted that IInd party Bank is corporate under Subsidiary SBI Act 1959. The Bank has its own service Regulation for recruitment of Class-III, IV employees as formulated by Govt. of India. The appointment of sweeper , peon, Daftry are made by Head Office adopting recruitment procedure publishing in newspaper calling names from Employment Exchange. Workman was not appointed following recruitment process. He was not appointed by the Branch. Workman has not completed 240 days continuous service. Workman was engaged as per exigencies. His discontinuation is covered under Section 2(oo)(bb) of I.D.Act. the discontinuation of workman doesnot amount to retrenchment. The claim of workman is to get back door entry as employee of the Bank. IInd party has referred ratio in various cases and submits that merely completing 240 days continuous service doesnot give right for regularization. The daily wagers are not entitled for absorption. Any part time employee is not covered as employee of the Bank. On such ground, IInd party prays for rejection of claim of workman.

5. Ist party workman filed rejoinder at page 12/1 to 12/3 reiterating his contentions in statement of claim that services of workman are terminated without notice, retrenchment is not paid.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Whether the action of the management of General Manager(O), State Bank of Indore, Indore in terminating the services of Shri Kamal Damodare w.e.f. 1-4-2002 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to relief claimed by him.

REASONS

7. Workman is challenging termination of his service for violation of Section 25-F of I.D.Act. That he completed 240 days continuous service preceding his termination. His services were terminated without notice, no retrenchment compensation was paid. Covering all those contentions, workman filed his affidavit of evidence. However workman did not appear for his cross-examination and consequently it was recorded that his evidence shall not be considered. As such the claim of workman is not supported by evidence on record. Management filed affidavit of witness Bhanu Pratap Singh Bhati contending that workman was engaged for cleaning work, one hour morning, one hour evening. Workman had not completed 240 days continuous service. Management's witness in his cross-examination admitted documents marked Exhibit W-1 to W-34. Witness of the management says he had made enquiry form earlier Managers of the Bank. The details of working days of workman are not produced. He claims ignorance whether workman was admitted and staff members raised fund for his support. The documents Exhibit W-1 to W-4 are not only w.r.t. wages paid for working days of the workman but those documents relates to various kinds of payment, purchase of glass, repairing charges, cleaning of Almirah, fan, purchase of stool, miscellaneous charges, handwatch etc. The documents W-1 to W-34 donot establish that workman was continuously working for 240 days preceding 12 months of his termination and as such there is no evidence that workman was continuously working for more than 240 days preceding his termination. Workman is not covered under section 25(B) of I.D.Act. consequently workman is not entitled to protection of Section 25-F,a of I.D.Act. That workman has not completed 240 days continuous service preceding his termination, IInd party was not bound to comply Section 25-F. Termination notice or payment of retrenchment compensation was not required by management. Reliance placed by Shri Ram Nagwanshi on ratio held in case of Samishta Dube and City Board, Etawah reported in 1999(81)FLR-746 & Jaipur Development Authority versus Ramsahai and another reported in 2007(1) Supreme Court Cases (L&S) 518 cannot be beneficially applied to case at hand. So far as violation of Section 25-F, G, H of I.D.Act, there is absolutely no pleading, no evidence is adduced as to whether management had engaged any other temporary employee after terminating services of Ist party workman. Considering the evidence discussed above, reliance is placed by learned counsel for IInd party on ratio held in 2008(1) SSC-575, 2008(2) SSC-552 is not necessary to

discuss in detail. From the evidence discussed above as workman failed to prove that he completed 240 days continuous service, I record my finding on Point No.1 in Affirmative.

8. In the result, award is passed as under:-

(1) The action of the management of Whether the action of the management of General Manager (O), State Bank of Indore, Indore in terminating the services of Shri Kamal Damodare w.e.f. 1-4-2002 is legal and proper.

(2) Workman is not entitled to relief claimed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1645.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 66/06) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/5/2014 प्राप्त हुआ था।

[सं. एल-12012/113/2005-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1645.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 66/06) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India, and their workmen, received by the Central Government on 28/05/2014.

[No. L-12012/113/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/66/06

PRESIDING OFFICER : SHRI R.B. PATLE

Shri Shivlal Raikwar,
S/o Gafloo Raikwar,
R/o Vill Ghat Pipariya,
Post Anantpura,
Tahsil Deory, Sagar (MP) ....Workman

Versus

Branch Manager,
State Bank of India,
Rehli Branch,
Distt. Sagar (MP) .....Management

AWARD

Passed on this 21st day of April 2014

1. As per letter dated 12-10-06 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/113/2005-IR(B-I). The dispute under reference relates to:

> " Whether the action of the management of State Bank of India, Rehli Branch, Distt. Sagar in terminating the services of Shri Shiv Lal Raikwar, Ex-Waterman w.e.f. 31-5-97 is justified or not? If not what relief he is entitled to and from which date?"

2. After receiving reference, notices were issued to the parties. workman submitted his statement of claim at Page 3/1 to 3/3. Case of workman is that he was appointed by IInd party on post of messenger cum waterman since May 1993 at Anantpura branch. Later on said branch was shifted to Tehli without any break in service, his salary was paid at the rate of wages fixed by the Collector. He had acquired status of permanent employee, his services were terminated from 31-5-97 by IInd party without assigning reasons. That his appointment was made following recruitment process of sub staff. That Branch Manager was authorized by higher authorities of the branch or making appointment of sub staff as per the vacancies in the branch. That he was appointed against vacant post by competent authority. He had worked more than 240 days during 12 preceding months preceding his termination on 31-5-97. That he is covered as workman under Section 25-B of I.D.Act. His services are terminated without following provisions of Section 25-F of I.D.Act.

3. Workman submits that he had regularly approaching management. Management issued letter dated 23-2-99 calling details about his working. Management had raised salary. Difference of salary was paid to him by cheque on 25-5-98. The Regional Office, Gwalior also called details about his service as per letter dated 13-3-99. The workman submitted particulars about him on 24-4-99. That his services were illegally terminated. He is unemployed after termination of his services. On such ground, workman prays for his reinstatement with full back wages.

4. IInd party filed Written Statement. Case of IInd party is that Ist party workman was engaged at Anatpura branch as part time daily wager for supplying water to the branch. He was intermittently engaged during 1-6-93 to 31-5-97. When Anantpura branch was merged in Rehli branch in the year 1997, the workman did not come to work. Workman did not offer his services since past 8 years of his discontinuance of his service. The material facts are suppressed by workman. Engagement of workman at Anantpura branch was on contract basis dependent on exigency of work. As soon as work was over, the workman didnot exist. Workman was not engaged as full time worker. He was not continuously working. It is denied that workman had completed 240 days continuous service

preceding 12 months of his service. Workman is not covered under Section 25 B of I.D.Act. there are administrative instructions for recruitment of sub staff in the Bank. Only after selection by recruitment committee, the required appointment would be made. Workman had not gone through selection process. The Branch Manager working at various branches have no authority to appoint sub staff. Workman doesnot get right to continue in the Bank by virtue of his temporary engagement on daily wages. IInd party prays for rejection of his claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of State Bank of India, Rehli Branch, Distt. Sagar in terminating the services of Shri Shiv Lal Raikwar, Ex-Waterman w.e.f. 31-5-97 is justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. Workman is challenging termination of his services for violation of Section 25-F of I.D.Act. Workman submits that from 1-6-93 to 31-5-97, he was continuously working as messenger. His services are discontinued without notice. Management denies above allegation. IInd party submits that workman was engaged as part time daily wager. He has not completed 240 days continuous service, he is not covered as workman under Section 25 B of I.D.Act. Workman has filed affidavit of evidence covering most of his contentions in statement of claim that he completed 240 days service in 12months preceding his termination, his services were terminated without notice. Workman has produced documents Exhibit W-1, W-2. As per Document Exhibit W-1, certificate is issued by IInd party that Ist party workman was working in Anatpura branch from 1-6-93 to 31-5-96. His work was satisfactory. As per document Exhibit W-2, the details about working of Ist party workman were called by him form the Bank. As per document Exhibit W-3, workman was paid difference of wages for the period June 93 to February 1997 . those documents clearly corroborate evidence of workman that he was continuously working from June 93 to May 1997 on daily wages. He was paid difference of wages. Workman in his cross-examination says that he was given appointment letter. In June 1993, it was taken but after 1 ½ years. He had worked in Anatpura branch. Said branch was shifted to Rehli. He worked for one year at Rehli branch and 3 years at Anatpura branch. He was doing work of filling water, taking dak/letters, moving ledgers etc. he was appointed by Shri B.M. Upadhyay when Anatpura branch was opened. He was not interviewed. The evidence of workman about his working in the branch is not shattered in his cross-examination.

7. Management filed affidavit of its witness Sohanlal. The witness of the management submits that workman was not appointed following recruitment process. Workman was intermittently engaged on daily wages during June 93 to May 1997. He had not completed 240 days continuous service. He is not entitled to protection under Section 25-F of I.D.Act. in his cross-examination, management's witness says that his affidavit is based on documents. Workman was working in the same branch from 1993 to 1997. He claims ignorance about any argument between the Bank and the workman. He claims ignorance about shifting of Anatura branch to Rehli branch. He also claims ignorance about circular No. 53. He claims ignorance about different working period of Ist party workman. Management's witness claims ignorance when workman was discontinued or workman herself absented form work. Management's witness admitted document Exhibit W-3 relating to payment of difference of wages. He denies that workman had completed more than 240 days service. The evidence of workman is corroborated by documents whereas evidence of management's witness is not cogent. He claims ignorance about details of working of workman. The evidence of workman corroborated by documents Exhibit W-1 to W-3 is sufficient to hold that workman was continuously working from June 93 to May 97 as messenger cum waterman. On the point of completion of 240 days continuous service, learned counsel for management Ashish Shroti relies on ratio held in case of Surendranagar Distt. Panchayat and another versus Gangaben laljibhai and others reported in 2006(9)SSC 132. Their Lordship dealing with Section 25-F, 25-B, 2(A) and requirement of 240 days continuous service, ownus lies on workman, he must adduce evidence to prove the factum of being in such an employment. In present case, evidence of workman is corroborated by document Exhibit W-1 to W-3.

8. Reliance is also placed in ratio held in case of Nedungadi Bank Ltd. Versus K.P. Madhavankutty and others reported in 2000(2) Supreme Court Cases 455. Their Lordship held law although doesnot prescribe in time limit for appropriate Govt. to exercise powers under Section 10 of I.D.Act. This power cannot be exercised to revive settled matters or to refer stale disputes. Workman was discontinued in service in May 1997. The reference is made in 2006 after about 9 years. Workman in his affidavit of evidence has stated that information was called by him from Manager in 1999. Thus workman appears to be pursuing redressal form management. It cannot be said that reference has become stayed.

In case of Surendranagar District Panchayat and another versus Jethabhai Pitamberbhai reported in 2005(8) supreme Court Cases 450. Their Lordship held ownus to prove 240 days continuous service lies on workman the

evidence of workman is corroborated by documentary evidence. He had completed 240 days continuous service. His services were terminated without notice, retrenchment compensation was not paid to him. Thus termination of services of workman is in violation of Section 25-F of I.D.Act, therefore I record my finding in Point No. in Negative.

9. Point No.2- In view of my finding in Point No.1 that termination of workman is illegal, question arises whether workman is entitled to reinstatement with back wages. Workman claims that he was appointed by Branch manager, he is competent to make appointment of sub staff but his evidence doesnot show that any public notice was issued or recruitment process was followed with participation of other candidates. The workman was engaged on daily wages. Appointment order was not issued to the workman, no evidence is adduced how many post of messenger from waterman were vacant in Anatpura/ Raheli branch. Therefore the workman who worked for a period of about 4 years may not be entitled for reinstatement. Learned counsel for workman relies on ratio held in case of Kuldeep singh Versus G.M, Instrument Design Development and facilities Centre and another arising out of SLP 417/07. Their Lordship of apex court following ratio in Sapan Kumar Pandit versus UP State electricity Board, reinstatement of workman with out back wages. The facts of present case are not comparable. Ratio cannot be applied to present case. Considering short period of work on daily wages of workman, in my considered view, compensation Rs. 50,000/- would be appropriate relief. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

(1) The action of the management of State Bank of India, Rehli Branch, Distt. Sagar in terminating the services of Shri Shiv Lal Raikwar, Ex-Waterman w.e.f. 31-5-97 is illegal.

(2) IInd party is directed to pay compensation Rs.50,000/- to workman within 30 days from the date of publication of award.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1646.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 111/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/01/96-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1646.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 111/97) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of Indore, and their workmen, received by the Central Government on 28/05/2014.

[No. L-12012/01/96-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/111/97

PRESIDING OFFICER : SHRI R.B.PATLE

Shri Ram Nagwanshi,
General Secretary,
All India State Bank of Indore
Employees Congress,
INTUC, Jardev Niwas, 9,
Sanwer Road, Ujjain .....Workman/Union

Versus

General Manager (Operations),
State Bank of Indore,
Merged as State Bank of India
Local Head Office,
Hoshangabad Road, Bhopal .....Management

AWARD

Passed on this 25th day of April 2014

1. As per letter dated 8-4-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/ 01/96/IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of State Bank of Indore, Regional Office, Indore in not promoting Shri Balak Ram Jial, Sub staff for the period from 1976 to 1985 to the post of clerk/cashier instead of paying him officiating allowance is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim through General Secretary of the union. Case of workman is that he was appointed as peon in IInd party Bank on 1-3-61. That with permission of management of Bank, he had passed High Secondary in 1975. The entry of his educational qualification was taken in his service record. That from

1976, though workman was posted as peon he was assigned work of cashier. He was regularly performing work on cash counter from 1976 to 1979 at Prince Yashwant Road branch, Indore. On 1-10-79 he was transferred to MG Road Branch, Indore. On same day workman had taken charge in said branch. From 1-10-79 to 1-6-86, he was working in cash section on receipt counter. That he had passed examination for post of clerk but he was declared fail in oral interview. Despite of working in cash section from 1976 to 85, he was not regularized, he was paid officiating allowance and the regular salary of clerk was not paid to him. He was repeatedly declared failed in oral interview. Workman submits that seniority list was declared in 1988, his date of birth was wrongly shown 4-5-37. His correct date of birth is 12-8-42. That he was retired assuming his date of birth as 4-5-37. That he was paid officiating allowance 7.5 % and 15 % of pay scale of clerk/ cashier. The regular pay for post of clerk was not paid to him. Workman estimates amount of Rs.1,08,000/- is due against IInd party on account of working as clerk. Workman further submits that as per bipartite settlement dated 19-10-66, Para 9.10,11 , the officiating allowance cannot be paid for working days more than 10 days. Workman was paid officiating allowance from 1976 to 1-6-85. He had submitted repeated applications for correction of his date of birth but no action was taken. On such ground, workman prays amount of Rs. 1,08,000/- for working on the post of clerk, annual increments payment on account of 2 annual increments for passing graduation for correction of date of birth and reinstatement in service.

3. IInd party filed Written Statement at Page 4/1 to 4/8. IInd party submits that Union has no locus-standi to represent the workman, no authority letter is produced by the Secretary of Union though it is passed by Union authorizing to represent workman in the case. That the Director of Bank is not necessary party. It is bad for joinder of parties. Statement of claim is not properly verified. Claim is not tenable. The dispute is raised after lapse of more than 10-15 years, it is barred by limitation.

4. IInd party further submits that workman was paid officiating allowance during 1976 to 79 for his working. The officiating allowance was paid as per rules. Workman was transferred for administrative exigencies. The passing of H.Sc or graduation doesnot give right of promotion to clerk to workman. The claim of workman for promotion is denied. Workman had passed written examination but he had failed in interview therefore workman was not eligible for obtaining post of clerk. Date of birth of workman was recorded at the time of joining service. The date of birth cannot be correct. Workman had not raised dispute about date of death after joining service. The claim about date of birth was wrongly shows as 4-5-1937 is incorrect. The parties raised dispute after a long delay. Therefore he is not entitled to relief claimed by him. IInd party prays for rejection of claim.

5. Ist party workman submitted rejoinder at Page 13/1 to 13/2 reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of State Bank of Indore, Regional Office, Indore in not promoting Shri Balak Ram Jial, Sub staff for the period from 1976 to 1985 to the post of clerk/ cashier instead of paying him officiating allowance is legal and justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to relief claimed by him.

REASONS

7. The terms of reference relates to denial of promotion to Shri Balak Ram Jial to the post of clerk cum cashier instead of paying officiating allowance is legal. The terms of reference doesnot cover the controversy of date of birth and consequent retirement of workman . I will make it clear that the contentions of workman in statement of claim in that regard are beyond the terms of reference and deserves no consideration. Workman filed affidavit of his evidence. He has stated that he was appointed as peon on 1-3-1961. He passed H.sc in 1975. From 1975 to 1979, he worked at Yashwant Niwas Road, Indore Branch. From 1979 onwards at MG Road branch, Indore. That during 1975 to 1990, though he was holding post of peon, he was doing work of clerk , officiating allowance was paid to him, his date of birth was wrongly shown and he was retired prematurely in 1997. However workman could not be cross-examined because of his death. His LR are brought on record. LR Ajay Jial filed affidavit of his evidence. He has stated identical facts in his affidavit of evidence and says that his farther though working as clerk from 1976 was not promoted as clerk. In his cross-examination, witness says his father was appointed as Presenting Officer. He passed H.Sc. examination, his father was working as clerk in cash section, permission was not given to him. The witness claims ignorance about the channel of promotion and qualification procedure. The evidence of LR of workman is absolutely silent about payment of officiating allowance paid to the workman was less. The pleadings in Statement of claim is also silent about less payment to officiating allowance to the workman.

8. Management's witness Sukhmal, S/o Indermal Pancholi in his affidavit of evidence says that there is no provision about promotion can be given only on ground working on officiating basis as clerk. That the deceased workman was paid officiating allowance from 1966 to 1985. No record is available. He further says that it is incorrect

that deceased workman was continuously performing work of clerk. In his cross-examination, witness of management says that he was not working at Yashwant Niwas Road branch Indore from 1976 to 1979. He was not working at MG Road branch from 1979 to 1979. He did not discuss the matter with the earlier Branch Managers. He claims to have seen provisions of Sastry Award, Desai Award. He had seen order on officiating work of the workman. Documents Exhibit W-1 is admitted by the witness of management. Witness had denied that deceased workman had passed BA in1975. On admission of management's witness document is marked Exhibit W-2, the document Exhibit W-1 shows working of deceased workman of different period of work on officiating basis. Said document doesnot show how much officiating allowance was paid to him. Document Exhibit W-2 provides payment of officiating allowance as per para 6.56 of Desai Award to sub staff. That difference of pay in the post of peon and initial pay scale for post of clerk is required to be paid as officiating allowance. The pleadings and evidence of workman is not disclosing that officiating allowance paid to workman was less. No other rule or settlement is produced by Ist party providing promotion on the basis of officiating working on the post of clerk. As per Exhibit W-2 officiating allowance is made, the claim of workman to the post of clerk and pay scale of that post from 1976 to 1985 has no basis. Consequently the claim of difference of amount officiating allowance and pay scale for post of regular clerk cannot be allowed. The action of the management paying officiating allowance and not promoting the deceased workman cannot be said illegal. For above reasons, I record my finding in Point No.1 in Affirmative.

9. In the result, award is passed as under:-

(1) The action of the management of State Bank of Indore, Regional Office, Indore in not promoting Shri Balak Ram Jial, Sub staff for the period from 1976 to 1985 to the post of clerk/cashier instead of paying him officiating allowance is legal and proper.

(2) Relief prayed by workman is rejected.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1647.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 203/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/5/2014 प्राप्त हुआ था।

[सं. एल-12012/46/99-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1647.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 203/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India, and their workmen, received by the Central Government on 28/05/2014.

[No. L-12012/46/99-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/203/99

PRESIDING OFFICER : SHRI R. B. PATLE

Shri Sarman Lal,
S/o Shri Prem Lala Agarwal,
At/PO Shahpur,
Shankerganj,
Distt. Mandla (MP) .....Workman

Versus

Asstt. General Manager,
Region-II, State Bank of India,
Zonal Office, Marhatal,
Jabalpur, MP. .....Management

AWARD

Passed on this 21st day of April 2014

1. As per letter dated 11-5-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/46/99/IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of State Bank of India, Region-II, Zonal Office, Jabalpur in terminating the services of Shri Sarman Lal, S/o Shri Premlal Agarwal, subordinate staff and not considering him for further employment under Section 25 H of the I.D.Act is justified? If not, what relief is the concerned workman entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/3. Case of workman is that he worked as Messenger/ farrash for 98 days during the period 13-11-80 to 24-12-80, 1-1-81 to 25-2-81 in IInd party Bank, Shahpura branch. Thereafter he worked for 75 days from 7-10-92. He was engaged on daily wages in Karondi branch of the bank. That from July 94, he worked on daily wages for 90 days. Workman submits that he would be absorbed as permanent employee. Workman submits that he was called for interview but result of interview was not communicated

to him. He claims ignorance about the result of the interview. That after July 1994, workman was not taken for work. He was not give appointment. During 7-10-92 to 1-7-94, workman had completed 181 days working as messenger and 607 days as canteen boy. As such he had completed more than 240 days service during the period 1980 to 1994. He was called for interview. He is eligible for regularization in service. He has submitted representations raising the dispute and ultimately the dispute has been referred. Workman prays for regularization of his service from 16-11-90, he prays for declaring result of the interview held on 16-11-90 and regularization of his service.

3. IInd party filed Written Statement at Page 8/1 to 8/7. IInd party raised preliminary objection that relief sought by workman is not covered in terms of reference. Workman has not sought any relief as per terms of reference. The Tribunal is obliged to adjudicate only dispute referred by it. The claim by workman in his application is not covered in the terms of reference therefore no relief can be granted to him. That dispute is filed in 1994. Any reasons are not assigned for delay of 4 months. Therefore the dispute is liable to be rejected.

4. IInd party further submits that workman was engaged as canteen boy of management between 13/5/92 to 16/11/92. There is local Implementation Committee in the Bank. The committee is constituted by staff members of Welfare committee. Branch Manager used to be President, any Union Representative become secretary and one staff member becomes member of such committee. The Bank provides subsidy to the committee to run work in the branch. Such committee engages canteen boy. Bank has nothing to do with such engagement by candidates committee. Bank has no control or supervision over the canteen boy. That during 1980-81, workman was engaged for 98 days. Workman has worked as messenger cum farrash on contract basis as per exigencies. Workman was not engaged. His services stood automatically terminated. Workman had not completed 240 days continuous service. He is not covered as workman under Section 25 B of I.D.Act. workman has not alleged violation of Section 25-H. No case is made out about right of workman under Section 25 B of I.D. Act. As per agreement dated 17-11-87, workman was interviewed on 16-11-90. Workman was not found suitable therefore he was not appointed. There was no right of appointment as claimed by him.

5. IInd party reiterates that workman was engaged for short period of 98 days during 1980-81. Workman was engaged as messenger cum farrash. As per exigency of work. He was paid wages Rs.20/- per day on contract basis. Workman has not completed 240 days. He has not entitled to relief prayed by him.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of State Bank of India, Region-II, Zonal Office, Jabalpur in terminating the services of Shri Sarman Lal, S/o Shri Premlal Agarwal, subordinate staff and not considering him for further employment under Section 25 H of the I.D.Act is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed by him.

REASONS

7. As per the terms of reference, dispute for adjudication is whether termination of service of workman is legal and not, considering workman for employment under Section 25 H are referred for adjudication. However the workman in his statement of claim has pleaded that he worked for 98 days during 13-11-1980 to 25-2-81, 75 days since 7-10-92 and 90 days till July 94. He claims to be entitled for regularization of services. That he was called for interview on 16-11-90 but result of interview was not informed. In Para-3 of his statement of claim, workman has pleaded that from 1980 to 1990, he worked for more than 240 days. His pleadings are silent that he had worked continuously for more than 240 days, 12 months preceding the date of termination of his services. The pleadings of workman are not clear on what ground he is challenging termination of his services. His claim for regularization is beyond the terms of reference. The claim for regularization in service is not clear based on Bipartite Settlement Rules or Regulations. Thus the pleadings in statement of claim are vague. Working days claimed by workman are not disputed. Workman has filed affidavit of his evidence. He has stated about working for 98 days during 13-11-80 to 25-2-81, 4 days in August 89, 4 days in Sept.1989, he was called for interview on 16-11-90 for permanent appointment as per bipartite settlement dated 17-11-87, the result was not informed. He claims to be entitled for permanent appointment. In para-6 he claims that he rendered continuous service more than 240 days in calendar year preceding his retrenchment on 2-7-94. No notice or compensation in lieu of notice was given to him. In his cross-examination workman says he was not given appointment letter, that he was not working as canteen boy, he was working as messenger. During 13-11-80 to 25-2-81, he was working at Karondi branch. There was no canteen at karondi branch. After 1994, he did not work, he was called for interview twice. He was not informed reasons why he was not selected. He was paid wages by cheque. He denies that he had not completed continuous service during any of the year. The evidence of workman is not consistent with his own pleadings. Workman has pleaded

in his statement of claim that he had worked as messenger for 181 days during 1980 to 1994 and 607 days as canteen boy. There is no evidence that the canteen was run or controlled by the Bank. In absence of such evidence, Ist party workman cannot be said employee of IInd party Bank. The evidence of workman is not cogent to establish that he was working for more than 240 days preceding 12 months of his termination in July 1994.

8. The evidence of management's witness Rajshekhar Shrivastava is consistent with the contentions raised in Written Statement that workman had worked 90 days as Farrash in 1980-81 at Shahpura branch. He further worked for 75 days in Karondi branch. He was paid Rs.20/- per day. As per settlement dated 17-11-87 he was called for interview on 16-11-90. He was not found suitable for absorption. That the canteen boy employed by canteen committee the Bank has no control or supervision on his working. Workman has not completed 240 days continuous service. In his cross-examination, management's witness says that he had seen payment vouchers. On its basis, he says workman worked for 76 days. He denies that he deposed false about workman working for 75 days. Management's witness denies that during 7-10-92 to 1-7-94, workman was working as messenger. The witness says that he was working as canteen boy during said period. The payment were made to workman by banker cheque as canteen boy. He denies that all Banker cheque, payment to workman are not deliberately produced. Management's witness was unable to tell reasons why workman was not selected as messenger. The burden lies on workman to prove that he completed 240 days continuous service. Learned counsel for management relies on ratio held in Case of Krishna Bhagya Jala Nigam Ltd. Versus Mohammed Rafi reported in 2009(11) Supreme Court Cases 522. Their Lorship held burden of proof as to completion of 240 days of continuous work in a year reiterated lies on the aggrieved workman. The evidence discussed above is not sufficient to discharge such burden. Rather pleading of workman itself is clear that he worked for 181 days as messenger and 607 days as canteen boy.

9. Counsel for Ist party relies on bunch of citations.

In case of Central Bank of India and others versus Central Bank Canteen boys, their Lordship of Guahati High Court after considering large number of citations concluded in para-17 that the decision of Supreme Court would show that the Court will have to record a finding that there was statutory or other explicit or implicit obligation on the part of the organization to maintain the canteens for staff and only then can the staff of such canteens be treated as employees of the organization.

In present case, the pleadings and evidence of workman are silent on the point canteen was run by bank therefore working of workman as canteen boy cannot be considered as employee of the Bank.

Reliance is also placed by counsel for workman in case of Central Bank of India versus S.Satyam and others. Their Lordship dealing with Section 25-H observed the next provision in Section 25-H which is couched and is capable of application to all retrenched workmen, nor mere covered by Section 25-F. It doesnot requirement of the ordinary meaning of the word retrenchment . The provision for re-employment of retrenched workmen merely gives preference to a retrenched workmen in the mater of re-employment over other persons.

In present case, pleadings and evidence of workman are silent as to who was employed after his termination and opportunity of employment was denied to him in violation of Section 25-H of I.D.Act. Therefore principles laid down cannot be beneficially applied to present case at hand.

10. Learned counsel for workman Pranay Choubey argued that at the time of termination of services of workman, seniority list was not displayed on notice board. Industrial Dispute Central Rules 1957 Rule 77 & 79 are violated. However there is absolutely no pleading or evidence on the point , therefore the ratio held in the case cannot be applied in the present case. Besides above in Case of State Bank of Bikaner and Jaipur versus Om Prakash Sharma reported in 2006(5) SCC-123 relied by Shri Pranay Choubey, it is held that violation of Rule 77 may attract penalty under Rule 79 but would not by itself entitle workman to reinstatement. Termination of workman is not illegal, no daily wages messenger was engaged in the Bank. For above reasons, I record my finding in Point No.1 in Affirmative.

11. In the result, award is passed as under:-

(1) The action of the management of State Bank of India, Region-II, Zonal Office, Jabalpur in terminating the services of Shri Sarman Lal, S/o Shri Premlal Agarwal, subordinate staff and not considering him for further employment under Section 25 H of the I.D.Act is legal and proper.

(2) Workman is not entitled to relief prayed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1648.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 231/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 प्राप्त हुआ था।

[सं. एल-12012/81/96-आईआर (बी)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1648.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 231/97) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of Indore, and their workmen, received by the Central Government on 30/05/2014.

[No. L-12012/81/96-IR (B)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/231/97

PRESIDING OFFICER : SHRI R.B.PATLE

Smt. Sulochana, widow, Sunil, Anil,
sons- LRs of deceased workman through
General Secretary,
All India State Bank of Indore Employees Congress,
Hardev Niwas, 9, Sanver Road,
Ujjain. .....Workman/Union

Versus

Dy.General Manager,
State Bank of Indore,
Zonal Office,
163, Kanchanbag,
Indore .....Management

AWARD

Passed on this 9th day of May 2014

1. As per letter dated 6-8-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/81/96-IR(B). The dispute under reference relates to:

> "Whether the action of the management of State Bank of Indore in terminating the services of Shri Shankar Rao Gilbile w.e.f. 1-3-95 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by General Secretary of Union. Case of Ist party workman is that he was working as Armed Security Guard from 15-8-74 in IInd party Bank. In 1994, he was working in the Bank. His wife and daughter were suffering from illness. They were admitted in hospital. For taking their care, he had proceeded on leave from 5-12-94. He had submitted application for leave. On 15-3-95, letter by RPAD was received by IInd party treating him as voluntarily retired. He had submitted to Regional Office as well the Manager of the IInd party Bank that he was not desiring voluntary retirement. He was on leave for taking care of his wife and daughter. It is further submitted that Ist party had sent application dated 3-3-95 requesting him to allow join duty. The application was received back. It was further submitted that the workman was in service for 20 years. He had not received letter dated 3-2-95 from IInd party. The allegation of IInd party about his unauthorized absence are false. He had received notice dated 1-3-95 on 15-3-95. That if he fails to join service within 15 days he would be deemed retired. He had not received said notice. That as per Bipartite settlement dated 8-9-83, it is provided that if workman remains absent without application continuously for more than 90 days or workman is employed at some other place, he has no intention to attend duties. If satisfactory reason is not given about his absence from duty, then only workman would be deemed to have voluntary retired. That as per Circular dated 9-11-92, 4 letters are required to be given to the workman. After giving 3 notices, notice for voluntary retirement can be given to the workman. That any of the notices were not served on the workman. That no notice was published in newspaper.

3. Workman submits that other employees shown in Para-10 were absent from duty for long period. No action of voluntary retirement was taken against them. IInd party is committed to engage security guard on contract, therefore his services were terminated without notice. That termination of his service is against principles of natural justice. his services are terminated in violation of Section 25-F, G, H of I.D.Act. On such ground , workman prays for his reinstatement with back wages.

4. IInd party filed Written Statement at Page 7/1 to 7/9, IInd party has raised objection that Union is not registered. It has no locus to submit statement of claim. Union has no territorial jurisdiction to raise the dispute. The statement of claim is not submitted in prescribed proforma. Workman was engaged on duty as Security Guard. All material contentions of workman are denied. It is submitted by IInd party that workman remained absent without application from 30-12-94. Intimation was issued to workman on 3-2-92. The directions given in said letter was not obeyed by workman. That 30 days notice was issued to workman by RPAD on 13-3-95. It was duly served on the workman. Workman didnot submit explanation. It is denied that workman has personally met the Regional Officer requesting to allow him to join duty. IInd party submits that notice dated 3-2-95 sent by RPAD was received by Sunil, Son of workman on 9-2-95. Workman did not join duty as per the directions. Workman was deemed voluntary retired from 15-3-95. The order on workman deemed voluntary retired is legal. The employees referred by workman in his statement of claim, no action for voluntary retirement was taken. Their case is not

comparable and relevant. It is reiterated that workman was unauthorisely absent on 9-3-93, 12-7-93, 29-9-93, 18-10-93, 21-9-94. Workman was in habit of remaining absent unauthorisely. It is denied that services of workman are terminated in violation of Section 25-F,G,H of I.D.Act. it is submitted that for unauthorised absence of workman, workman is voluntary retired. Workman failed to join duty within 15 days even after notice dated 3-2-95. The action of the management is legal and proper. Workman was unauthorisely absent for 400 days during 1988 to 1992, 250 days during 1993-94. On such grounds, IInd party prays for rejection of claim.

5. Union filed rejoinder at Page 8/1 to 8/4 reiterating his contentions in statement of claim. Workman died during pendency of reference and his LR Smt. Sulochana-widow, Sunil, Anil- sons of deceased workman are brought on record.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Whether the action of the management of State Bank of Indore in terminating the services of Shri Shankar Rao Gilbile w.e.f. 1-3-95 is justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. As per terms of reference, legality of termination of services of deceased workman needs to be decided. Workman died on 25-5-99 during pendency of reference proceeding. His widow Sulochana filed affidavit of evidence. She has stated that her husband Shri Shankar Rao was working as Security Guard from August 1974. Her husband was on leave to take care of his daughter and herself for their illness. They were admitted in hospital. Her husband was voluntarily retired from 1-3-95 without giving him any opportunity. In her cross-examination, she denies that her husband had taken voluntary retirement.

8. Management filed affidavit of evidence of Surendra Kumar Farkiya, J.T.Birle but they failed to appear for their cross-examination. Affidavit of evidence of Shri S.M. Pacholi is filed by management. From his evidence, documents Exhibit M-1 to M-16 are proved. Management's witness in his affidavit of evidence has stated that deceased workman was absent form duty form 29-1-93. Notice was issued to workman on 9-3-93. Notice was served on 13-3-93. Workman was absent from duty from 28-5-93, again from 15-9-93 to 28-10-93, the notices were issued to workman for his unauthorised absence. Workman was absent from duty from 26-11-93, 4-4-94, 27-7-94. Notices were issued to workman about period of unauthorized absence. Workman remained absent from 5-12-94, notice was issued to him as per Clause 17 of Bipartite settlement dated 10-4-99 on 3-2-95. It was received by Sunil, son of deceased workman on 9-2-95. That workman was unauthorisely absent. He was treated to have retired. Workman was paid amount of Rs. 52098 by cheque on 10-7-95. In his cross-examination, witness claims ignorance whether deceased workman was appointed on 15-4-74. That witness was not working in the Bank during 1994-95. He claims that workman had not submitted any leave application. That he had not disclosed the matter with any of the Security Officer of the bank. Only he had seen office record. Before termination of service, no chargesheet was issued to workman, enquiry was not conducted against him. The services were terminated as per Sastry Award. The witness did not admit documents about the absence of Sunita, Ramesh, Balwant Singh. Witness did not remember date of unauthorized absence of workman.

9. As per document Exhibit M-1 workman was absent from 29-1-93, said letter was issued on 9-3-93. Exhibit M-2 is postal acknowledgement. As per Exhibit M-3 workman was absent form duty form 28-5-93 and letter was issued on 12-7-93. As per Exhibit M-4 workman was absent from duty from 15-9-93, letter was issued on 29-9-93. M-5 is the postal acknowledgement. Exhibit M-6 is notice issued to workman for his absence from 15-9-93 i.e. unauthorized absence shown in Exhibit M-4.Exhibit M-8 shows workman was unauthorisely absent from 26-11-93, notice was issued on 21-9-93. Exhibit M-9 shows workman is absent from duty from 4-4-94. Notice was issued on 3-5-94. M-10 shows absence of workman from duty from 27-7-94, letter issued on 21-9-94. In Exhibit M-12, unauthorized absence is shown from 5-12-94. Workman was directed to report on duty within 30 days otherwise he would be treated voluntary retired as per Para 522(3) of Sastry Award. Said notice was issued on 30-2-95. This is the main document issuing notice for voluntary retirement to workman. The unauthorized absence is shown from 5-12-94 i.e. period of absence is less than 90 days on the date of issuing notice. Exhibit M-14 is notice issued on 13-3-95 treating workman voluntary retired. As per Para 22(3) of Sastry Award. Exhibit M-16 is document showing recovery of amount from workman at different heads. Para-17 of Bipartite settlement provides.

Voluntary Cessation of employment by the employee Clause (a) of Para-17 provides when an employee absents himself from work for a period of 90 or more consecutive days without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/subsequently or when there is satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a

notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating interalia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice."

10. Notice Exhibit M-12 doesnot show unauthorized absence for consequently more than 90 days documents Exhibit M-1, 2,3,4,6, 8,9,10 donot show unauthorized absence of Ist party workman consequently. Notice Exhibit M-12 & 14 are silent about the workman was employed at other place or satisfaction of the management that the workman will not join duties.

11. Learned counsel for IInd party Shri Shroti emphasized that voluntary retirement of workman is on the ground of satisfaction of management that workman had no intention of joining duties as 3rd part of sub clause a of Clause 17 . However as notice Exhibit M-12,14 are silent about satisfaction of the management that workman will not join his duties and argument advanced on the point cannot be accepted. The notice Exhibit M-12,14 are not showing unauthorized absence of workman for 90 days or more rather period of unauothorised absences comes hardly 30 days. The earlier period of absence from duty of workman cannot be tagged with his unauthorized absence. Clause 17(a) contemplates consecutive absence for 90 days or more. Thus voluntary retirement of deceased workman is not in compliance of Section 17(a) of Bipartite Settlement.

12. Learned counsel for IInd party Mr. Shroti relies on ratio held in Case of Punjab and Sind Bank and others versus Sakattar Singh reported in 2001(1) Supreme Court Cases 214. The ratio held in the case that deemed voluntary retirement under Clause 16 of IV Bipartite settlement cannot be said in violation of rules of natural justice. The rules of natural justice cannot be could not applied in a vacuum without reference to the relevant fact and situation.

In case of Syndicate Bank versus General secretary, Syndicate Bank Staff Association and another reported in 2000(5) Supreme Court cases 65. Their Lordship held requirements of facts held stood satisfied even without holding a departmental enquiry. Bank employee unauthorisedly absenting himself from work for the period exceeding the prescribed limit of 90 days. Bank in terms of Bipartite Settlement serving notice on him by registered post, requiring him to submit his explanation and to join work within the prescribed time limit of 30 days. In such case voluntary retirement without holding DE is not violative of principles of natural justice.

The facts of present case are not comparable. Workman was not consecutively absent from duty for 90 days as per Exhibit M-12,14. There is no evidence about satisfaction of the management that workman will not join duty. Therefore the ratio in both the cases cannot be applied to the case at hand.

13. Copy of judgment in Case No. R/28/98 is also brought to my notice. The facts of the case are not comparable. However in said case directions were issued for reinstatement with 30 % back wages.

14. From evidence and legal position discussed above, it is clear that deemed voluntary retirement of workman is not as per Clause 17(a) of Bipartite Settlement reproduced above. Therefore I record my finding in Point No.1 in Negative.

15. Point No.2- in view of my finding in Point No.1 that action of management is not legal, question arises to what relief the workman/ LRs are entitled. The deemed voluntary retirement of workman is found illegal. Workman had died in 1999. There is no evidence on record what deceased workman was doing after his voluntary retirement. Management has not adduced any evidence about workman was in gainful employment. Considering above status of evidence, it would be appropriate to allow reinstatement of deceased workman with 50 % back wages. Accordingly I record my finding in Point No.2.

16. In the result, award is passed as under:-

(1) The action of the management of State Bank of Indore in terminating the services of Shri Shankar Rao Gilbile w.e.f. 1-3-95 is illegal.

(2) IInd party is directed to reinstate workman with continuity of service and 50% back wages till his death i.e. 24-5-99.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1649.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रतलाम मन्दसौर क्षेत्रीय ग्रामीण बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 171/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/237/95-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1649.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 171/97) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Ratlam Mandsour Kshetriya Gramin Bank and their workmen, received by the Central Government on 30/05/2014.

[No. L-12012/237/95-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/171/97

PRESIDING OFFICER : SHRI R. B. PATLE

Shri Dinesh Sharma,
Gram & Post Mandwi,
Tehsil Jawra,
Ratlam. .....Workman

Versus

The Chairman,
Ratlam Mandsour Kshetriya Gramin Bank,
Near Civil Hospital,
Mandsour .....Management

AWARD

Passed on this 9th day of May, 2014

1. As per letter dated 23-6-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/237/95-IR(B-I). The dispute under reference relates to:

> " Whether the action of the management of Ratlam Mandsour Kshetriya Gramin Bank in terminating the services of Shri Dinesh Sharma w.e.f. October 1990 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/4. Case of Ist party workman is that he was working as Messenger in IInd party Bank form 30-4-88 to 22-9-90. He was also required to work as sweeper. In October 1990, regular messenger was appointed in Head office. Thereafter the Manager without any reason terminated him. While terminating his services, assurance was given to him of regular appointment in Bank. Workman further submits that he was paid Rs.11 per day. His wages were less than Collector rate. Amount of PF was not deducted from him. He was not given any kind of leave. IInd party violated the statutory provisions. That wages were paid to him obtaining his signature on vouchers. That he had completed 281 days in the year 1989. That he was continuously working till 22-9-90. When matter was taken before ALC, IInd party submitted that workman had not completed 18 years of age, he had not passed 7th standard. He was not fulfilling conditions of eligibility. Workman further submits that material facts were suppressed. IInd party anyhow wanted to terminate his services. He is rendered unemployed. On such grounds, Ist party workman prays for his reinstatement with consequential benefits. He also claims compensation Rs. 5 lakh.

3. IInd party has not filed Written Statement. IInd party is proceeded exparte on 22-3-2013.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Ratlam Mandsour Kshetriya Gramin Bank in terminating the services of Shri Dinesh Sharma w.e.f. October 1990 is legal and justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to relief claimed by him.

REASONS

5. Workman filed statement of claim. IInd party has not filed Written Statement. Workman has not participated in the reference proceeding. He remained absent since 4-6-09. Workman engaged Alok Hoonka, Advocate, he also remained absent. As workman failed to adduce evidence in support of his claim, I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

(1) The action of the management of Ratlam Mandsour Kshetriya Gramin Bank in terminating the services of Shri Dinesh Sharma w.e.f. October 1990 is legal.

(2) Workman is not entitled to relief claimed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1650.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 9/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/74/2006-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1650.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/07) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of Indore, Regional Office, State Bank of Indore and their workmen, received by the Central Government on 30/05/2014.

[No. L-12012/74/2006-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/9/07

PRESIDING OFFICER : SHRI R.B.PATLE

Shri Upendra Narayan Singh,
S/o Shri Ramji Singh,
Resident of behind MIG-50,
Vadunandamnagar,
Bilaspur CG .....Workman

Versus

General Manager (Operations),
State Bank of Indore,
Merged as State Bank of India
Local Head Office,
Hoshangabad Road,
Bhopal .....Management

AWARD

Passed on this 13th day of May, 2014

1. As per letter dated 4-1-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/74/2006-IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of State Bank of Indore, Bilaspur branch, (merged as State Bank of India) in terminating the services of Shri Upendra Narayan Singh, S/o Shri Ramji Singh, Ex-Peon is legal and justified? If not, what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at page 3/1 to ¾. Case of Ist party workman is that he was engaged as permanent peon by Branch Manager Kumar Satyendra from 27-4-97. He was paid wages Rs.40 per day. He rendered his services with devotion without grievance from any corner. His wages were increased from Rs. 40 to 50, 55, 70, 80, 100. He was working Monday to Saturday-6 days in a week. He was not paid wages for holidays. He worked under Branch Manager Satyendra, K.C.Jain, K.M.saxena, D.K.Urkude & J.P.Nimje during 1997 to 13-12-05. His services were terminated without notice. He was not paid retrenchment compensatin. Though he completed 240 days continuous service during each of the year, his services were terminated in violation of Section 25-F of I.D.Act. that he is covered as workman under Section 25 B of I.D.Act. IInd party violated Section 25-G, N of I.D.Act. Principles of Ist come first go was not followed. IInd party violated Section 25-H of I.D.Act. On such ground, workman prays for his reinstatement with back wages.

3. IInd party filed Written Statement at page 7/1 to 7/8. The claim of workman has opposed. IInd party submits that it is established under SBI Act 1959. The appointment of clerk and sub staff is made as per rules, regulations made by Govt. of India. The appointments of messengers, daftaries are made as per rules. The post are advertised , names are called from Employment Exchange. The workman was not appointed following such procedure. Claim of workman is to obtain Bank employment by back door entry. That workman was engaged for cleaning and duty work in the branch for about 1 ½ hours in the morning and 1 or 2 hours after closing of the bank. Workman had not completed 240 days continuous service. Workman doesnot get status of regular employee of the Bank. There was no need to terminate his services. Workman was not issued appointment letter. He not completed 240days continuous service. IInd party referred to the ratio held in various cases. It is submitted that workman is not entitled to regularization or reinstatement. IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of State Bank of Indore, Bilaspur branch, (merged as State Bank of India) in terminating the services of Shri Upendra Narayan Singh, S/o Shri Ramji Singh, Ex-Peon is legal and justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. Workman is challenging termination of his services for violation of Section 25-F,G, H of I.D.Act. That his services were terminated without notice and without paying retrenchment compensation despite of the fact that he completed 240 days continuous service during each of the year. Above contentions of workman are denied

by management. Workman filed affidavit of evidence. He has stated in his affidavit that he was working as permanent peon from 27-4-97 with IInd party. He was paid wages Rs. 40 per day. He was working 8 hours every day. He completed 240 days continuous service. That other employees Laxeshwar Prasad Gupta, Lalit Kumar Soni, Anil Singh are engaged by Bank after termination of the service. That he was continuously working from 27-4-97 to 12-12-05. In his cross-examination, workman says he passed 8th standard. He understands English with some difficulty. That appointment letter was not given to him. He was not called for interview or written test. He was given identify card for carrying cash. He had not submitted application. He had made oral request. Certificate was not signed in his presence. From evidence of the workman document Exhibit W-6 circular issued by Branch Manager and Exhibit W-7 identity card are admitted in evidence. In his cross-examination, there is no suggestion that workman was not continuously working. That he not completed 240 days continuous service. The evidence of workman on the above point is not shattered in cross-examination. Document Exhibit W-1 produced by workman pertains to the expenses of different nature incurred by Bank. Said document is not exclusive related to the payment of wages to worker. Exhibit W-3 is letter given by Controlling Authority. Asstt. Manager of Bank for payment of gratuity amount. Order of payment of gratuity amount is filed by the Competent Authority. Exhibit W-4 is copy of cheque of Rs.10,290 paid to workman on account of bonus. Document Exhibit W-5 is copy of the provisions of I.D.Act admitted by IInd party. Exhibit W-5 cannot be said a document of Party rather it is copy of statutory provisions. Exhibit W-6 is certificate issued by Branch Manager. That workman was working from 27-4-97 till 31-3-01 in State Bank of Indore Main Branch, Bilaspur. Exhibit W-7 is Identity Card. Claim of applicant is supported by certificate Exhibit W-6 as discussed above. The evidence of Ist party workman that he was continuously working from 1997 to 2005 is not shattered in his cross-examination.

6. The evidence of management's witness Satyendra supporting management's contention that workman was engaged for 1-2 hours normally. In his cross-examination, management's witness says during 1997 to 2005, he was not working in Bilaspur Branch. There was no sanctioned post of peon in said branch. The witness of the management has no personal knowledge about working of the Ist party in the branch. He has not produced document regarding working days or payment of wages. He claims ignorance about how wages were paid to workman. Evidence cannot be relied in preference to evidence of workman supporting the documents. In Para-10 of his cross-examination, he says that he has not produced documents to show that workman was working for 1-2 hours in the branch. Thus the oral evidence of workman corroborated by documents is worth to place reliance. From evidence discussed above, it is clear that workman was continuously working for more than 240 days preceding termination of his service, his services were discontinued without notice, without paying retrenchment compensation. Therefore termination of his service is in violation of Section 25-F of I.D. Act, for above reasons, I record my finding in Point No.1 in Negative.

7. Point No.2- In view of my finding in Point No.1 that termination of service of workman is illegal for violation of Section 25-F of I.D.Act, question arises whether workman is entitled for reinstatement with back wages. Evidence of workman is clear that he has not submitted application, he was not interviewed, he not appeared for cross-examination. Evidence is clear that post of sanctioned post is not available in the branch therefore reinstatement of workman working on daily wages would not be appropriate.

8. Mr. Ram Nagwanshi submitted copies of judgments in Case of Samishta Dube Versus City Board Etawah and another reported in 1999 (81) FLR-746. Ratio held in the case that employer shall ordinarily retrench the workmen who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person.

The ratio cannot be beneficially applied to present case as controversy does not relate to retrenchment of senior or junior employees.

Reliance is also paced in ratio held in case of Regional Manager, SBI Versus Rakesh Kumar Tewari reported in 2006(108)FLR 733. Ratio held in the case is that Section 25-G, H of I.D. Act, deals with contradiction. The Tribunal cannot contradict case of violation of Section 25-G. Learned Counsel for IInd party Mr. Tripathi produced copy of judgment in R/65/07 by this Tribunal. Considering the facts and tenure of service, compensation Rs.75,000 was awarded instead of reinstatement.

9. Shri Tripathi also relies on ratio held in case of Raj Kumar Versus Jalagaon Municipal Corporation reported in 2013(2) Supreme Court Cases 751. Their Lordship considering facts held payment of Rs.10,000 each to the appellants will not adequately compensate them. Hence appellants who approached for conciliation after 8 to 10 years from date of termination are entitled to a sum of Rs.50,000 each whereas appellant who approached Conciliation Officer within 2-3 years shall be entitled to get a sum of Rs. 1 Lakh. From reading of Para-2 of the judgment, it is clear that the employees engaged as coolies in the construction department of the corporation in 1989, his services were terminated after 2 years in 1991.

In present case workman was working from 1997 to 2005. Considering the spam of working on daily wages, compensation Rs. 1 Lakh would be appropriate.

10. In the result, award is passed as under:-

(1) The action of the management of State Bank of Indore, Bilaspur Branch, (merged as State Bank of India) in terminating the services of Shri Upendra Narayan Singh, S/o Shri Ramji Singh, Ex-Peon is not legal.

(2) IInd party is directed to pay compensation Rs. 1 Lakh to workman Shri Upendra Narayan Singh.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1651.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट संदर्भ संख्या 85/2001 को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/05/2014 को प्राप्त हुआ था।

[सं. एल-12012/48/2001-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1651.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 85/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of Indore, and their workmen, received by the Central Government on 30/05/2014.

[No. L-12012/48/2001-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/85/2001

Present : SHRI R.B.PATLE, Presiding Officer

General Secretary,
Daily Wages Bank Employees Association,
9, Sanwer Road,
Ujjain ...Workman/Union

Versus

General Manager (Operations),
State Bank of Indore,
Merged as State Bank of India
Local Head Office,
Hoshangabad Road,
Bhopal ...Management

AWARD

Passed on this 15th day of May, 2014

1. As per letter dated 14-05-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/48/2001-IR(B-I). The dispute under reference relates to:

> " Whether the action of the management of State Bank of Indore, Indore in terminating the services of Shri Raisuddin w.e.f. 05-10-99 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1 to 3/5. Case of Ist party workman is that he was engaged as permanent peon on daily wages Rs. 25 by Branch Manager E.C. Saini in June 1990. His wages were increased to Rs. 30, 35 per day. He was working under Branch Manager E.C.Saini, B.B.Ratan Parkhi, K.G.Joshi, Subhash Saronde & Shri R.S.Bhargav. He was paid wages under voucher. After Branch Manager Rajendra joined in the Bhopal branch, he was assigned duties of Daftary and peon. During July 97 to March 97, he was assigned duty in extension branch. The wages were paid in different names. That he had completed more than 240 days continuous service all the years. He was paid bonus. His services were discontinued from 12-10-99 without notice. He was not paid retrenchment compensation. After termination of his service, other employees were continued by the branch. His services are terminated in violation of Section 25-F, G, H of I.D.Act. On such grounds, Ist party workman prays for reinstatement with back wages.

3. IInd party filed Written Statement at Pages 6/1 to 6/8. IInd party raised preliminary objection that as workman has not produced documents about working for more than 240 days, reference is not tenable. That workman was not employee of the Bank. Reference is vague. It is not tenable. Workman was not terminated by Bank. There was no employer employee relationship between parties. That Ram Nagwanshi is a dismissed employee of the Bank, he is not competent to represent Ist party workman.

4. IInd party submits that a Bank incorporated as per SBI Act, 1959. That as per prevailing procedure the appointment of peon, Daftary, sweeper are made by Head office following recruitment process giving publication in newspaper, names sponsored through Employment Exchange. Workman was not appointed following such procedure. Workman is trying to get employment in Bank for back door entry. It is reiterated that workman had not completed 240 days continuous service his services were engaged as per requirement. His discontinuation of workman is covered under Section 2(oo)(bb) of I.D.Act. workman was engaged for 2-3 hours per day. Workman is

not entitled to regularization/reinstatement in the Bank being engaged temporarily.

5. Ist party filed rejoinder at Pages 9/1 to 9/2 reiterating his contentions in statement of claim. That his services are terminated in violation of provisions of I.D.Act.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	"Whether the action of the management of State Bank of Indore, Indore in terminating the services of Shri Raisuddin w.e.f. 5-10-99 is justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

7. Workman is challenging termination of his services for violation of Section 25-F, G, H of I.D.Act. workman filed affidavit of his evidence at Pages 11/1 to 11/2. However he failed to appear for his cross-examination. As per order sheet dated 3-9-2012, the representative of workman submitted that he does not workman to be cross-examined as such evidence of workman was closed. His evidence was not to be looked into in the case. Thus claim of applicant is not supported by any evidence. Affidavit of workman cannot be considered. Management has filed affidavit of Shri Arun Kumar supporting contentions of management that workman was engaged as per exigencies for 2-3 hours per day. He had not completed 240 days continuous service. Management's witness in his cross-examination says during 1989-90, he was not working in the branch. He did not receive information from the earlier Branch Manager. The documents are not produced by him. He claimed ignorance about the appointment orders, attendance register and payment vouchers. The evidence of management's witness is not supported by documents. He claimed ignorance on all material points though his evidence be hardly relied, workman has also failed to make himself available for his cross-examination and his evidence cannot be considered. Thus for absence of evidence of workman, his contentions cannot be upheld. Therefore, I record my finding in Point No.1 in Affirmative.

8. In the result, award is passed as under:-

(1) The action of the management of State Bank of Indore, Indore in terminating the services of Shri Raisuddin w.e.f. 05-10-99 is proper.

(2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1652.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 55/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/05/2014 को प्राप्त हुआ था।

[सं. एल-12011/67/2009-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1652.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of Punjab National Bank, and their workmen, received by the Central Government on 30/05/2014.

[No. L-12011/67/2009-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF A REFERENCE
U/S 10(1) (D) (2A) OF I.D. ACT, 1947

Ref. No. 55 of 2009

Employers in relation to the management of Punjab National Bank, Zonal Office, Ranchi

AND

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding officer

Appearances :

For the Employers : Sri Arun Kr. Sinha, Sr. Manager

For the workman : Sri N.N. Choudhary, Rep.

State : Jharkhand Industry : Banking

Dated 28/03/2014

AWARD

By Order No.L-12011/67/2009 -IR -(B-II), dated 12/10/2009, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Punjab National Bank, Zonal Office, Ranchi by imposing punishment of discharged from service with superannuation benefits as would be due otherwise at the stage of which he was presently placed and without disqualification from future employment on Shri Jwala Prasad, Head Cashier, Dumka Branch in the decision making process is justified & appropriate? What relief the aggrieved workman is entitled to?"

2. The case is received from the Ministry of Labour on 21.10.2009. After notice both parties appeared. The Sponsoring Union/Workman files their written statement on 11.11.2009. The management files their written statement on 24.02.2011. Thereafter they are files their rejoinder and documents.

3. The short point involved in the case as to whether discharge of the workman with service benefits is proper or not. The workman is the cashier of Punjab National Bank. He faced charges and faced enquiry. On the basis of the said enquiry report he has been discharged from duty. But before this Tribunal the departmental enquiry conducted by the management has ordered improper, and order reached finality.

4. On the basis of two charges, the workman has been discharge from service. 1st There was short of cash of Rs. 8000 in the hand of the workman and the same was deposited in the said Bank. 2nd the workman took false T.A. from the bank management.

5. First enquiry was conducted by the enquiry Officer i.e. Sr. Manager Bokaro Steel found charge was not proved. But Bank authority discharged the workman. The Bank management held that charge No.1 was partly proved. Misappropriation cannot be proved partly. It is either temporary misappropriation or permanent.

6. Moreover on the date of cash loss the cash has been deposited in banks such type of things usually happened for which bank book circular has prescribed. If the cash is deposited in the same day, no one will be held responsible. Moreover workman witnesses have sated that daily wager of bank, occasionally handled cash. Therefore, charge No.I has not been proved against the workman.

7. So far as false T.A. has been taken, it must have been passed by the higher authority. If it is falsely taken, same could have been recovered. Moreover a cashier who sits in cash counter cannot go on T.A without the order of the Branch Manager of the bank. The workman has also stated so in his counter, which has not been controverted. Particularly a bank staff has stated so. Moreover MW-4 has stated that "purpose of all journey and journey taken up by the workman were as per document."

8. Moreover if the Bank management found the workman guilty why he did not dismissed him, after following due procedure. Without any serious lapses or stigma, discharge of the workman is not proper. The workman be reinstated in service. It is on record that workman has died in the meantime after prolonged illness, The question of his gainfully engagement during the period of discharge does not arise at all.

9. Considering the facts and circumstances of this case, I hold that the action of the management of Punjab National Bank, Zonal Office, Ranchi by imposing punishment of discharged from service with superannuation benefits without disqualification from future employment of Shri Jwala Prasad, Head Cashier, Dumka Branch in the decision making process is not justified & appropriate. Hence workman be reinstated with 75% of back wages. The benefits of a workman/ deceased workman if any be given to the workman /legal representative.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1653.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ सं. 2/41/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/05/2014 प्राप्त हुआ था।

[सं. एल-12012/27/2008-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1653.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/41/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-II, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of Indian Bank, and their workmen, received by the Central Government on 30/05/2014.

[No. L-12012/27/2008-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K. B. KATAKE, B.A.LL.M, Presiding Officer

REFERENCE NO. CGIT-2/41 of 2008

EMPLOYERS IN RELATION TO THE MANAGEMENT OF INDIAN BANK

The Deputy General Manager
Indian Bank
Vigilance Cell, Circle Office,
18-F, Maker Tower,
Cuffe Parade,
Mumbai-400005

AND

THEIR WORKMAN
Shri Sanjay G. Dhindle
Siddharth Nagar,
Dumping Road,
Behind Gala Company,
Mulund (W),
Mumbai-400 080.

APPEARANCES :

FOR THE EMPLOYER : Mr. Abhay Kulkarni, Advocate

FOR THE WORKMAN : Ms. Kunda Samant, Advocate

Mumbai, dated the 13th December, 2013

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No. L-12012/27/2008 -IR (B-II) dated 18/6/2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following Industrial Dispute to this Tribunal for adjudication:

> "Whether the action of the management of Indian Bank, Prabhadevi Branch, Mumbai by orally terminating the services of Shri Sanjay G. Dhindle w.e.f. 29/8/2007 is justified? If not, what relief the workman, Shri Sanjay G. Dhindle is entitled to ?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party workman filed his statement of claim at Ex-7. According to the second party workman he has passed 10th Std. He is 35 years of age. He belonged to reserved category of Scheduled Tribe and hails from a very poor family and residing in slum area. He also completed his 12th Std. by joining night college. The first party has employed him as sub-staff-cum-Peon. Initially he has worked in the Stationary Department of the Bank. There he used to make packages of the stationery articles for handing over the same to various branches of the bank. He also used to clean the premises of the Bank, used to collect petty cash of the bank from other banks and was working as a Peon. He was appointed by the first party on 22/1/1993 in the Stationery Department in Vidya Vihar Branch. He worked there for six years. Thereafter he was transferred to Prabhadevi Branch and worked there as Peon-cum-sub-staff. His working hours were 9.30 a.m. to 4.30 p.m. daily. They used to pay him against vouchers. He used to work from Monday to Saturday. They used to obtain his signatures on the vouchers. Three days in his name as Sanjay and used to ask him to sign for the remaining three days in the name of Santosh. He worked more than 240 days in a calendar year without any break. They used to pay him meager amount initially @ Rs.29 per day. Gradually, they increased it to Rs.30 per day then Rs.40 and lastly they used to pay him Rs.100 per working day on vouchers. The vouchers are in the custody of first party. The workman has got some xerox copies thereof. The workman has worked since 1993. He worked continuously for 14 ½ years for meager amount as daily wages. The first party bank has regularized the services of some of his colleagues as permanent employees of the bank. The second party workman also requested the first party bank to regularize his services. Therefore, the concerned officer of the bank orally asked him not to attend the work of the first party from 29.8.2007. He was victimized by the first party. The first party indulged in Unfair – Labour – Practices. They exploited the situation by extracting work for meager amount of wages. In spite of more than 14 ½ years of service, they did not regularize his services. On the other hand, when workman has asked for the same they have terminated his services.

3. The workman therefore has raised industrial dispute before A.L.C.(C). As conciliation failed on the report of A.L.C., the Labour Ministry sent the reference to this Tribunal. The workman claims that he is not gainfully employed. Therefore, he prays for the declaration that termination of his services be declared unjustified. He also sought for declaration that, the action of the first party is illegal in not absorbing him in the permanent vacancy of sub-staff. He also prays for direction to the first party to reinstate him with full back wages and consequential benefits and the cost.

4. The first party Bank resisted the statement of claim vide their written statement at Ex-11. According to them, the Govt. has not made reference in respect of absorption of the workmen in the employment of the bank. Therefore, Tribunal cannot give any such direction. It is further contended that the Govt. and RBI has imposed ban on the recruitment of any regular employee in the bank which is a Public Sector Undertaking. Furthermore the workman was never recruited in the employment by following the procedure prescribed therefor. Therefore, such a backdoor entry in the services of bank cannot be allowed. According to them, the workman was engaged on daily wages and on the basis of as and when required for. They denied that workman has worked continuously for 240 days in any calendar year. They denied that the workman has worked for 14 ½ years continuously with the first party bank. They denied that the workman was employed by them. They also denied that, they terminated the services of the workman. According to them, as they have never employed or appointed the workman, thus the question of

termination of his services does not arise. In the circumstances, it is submitted on behalf of the first party that reference is not maintainable. As the workman was not appointed by following recruitment procedure therefore, he cannot be absorbed in the services of the bank. Hence, they pray that the reference be rejected with cost.

5. Following are the issues for my determination. I record my findings thereon for the reasons to follow.

Sr. No.	Issues	Findings
1.	Whether there exists employer-employee relationship between the parties?	Yes
2.	If yes, whether action of the management in terminating the services of the workman is justified?	No
3.	If not, whether the workman is entitled to be reinstated and regularized in the services of the first party with full back wages as prayed for?	Yes
4.	What order?	As per the final order.

REASONS

Issue No. 1 :—

6. In respect of the inter-se relations between the parties, it is the case of the first party that the workman is not their employee and he was engaged on daily wages and as and when required for. According to them, the workman never worked with them continuously as has been alleged. Therefore, they contended that there exists no employer-employee relationship between them and the reference thus not tenable. As against this it is the case of the workman that, he was working with the first party as sub-staff/Peon since 1993. Initially he worked in Vidya Vihar Branch for 6 years. There he worked in Stationary Department as Peon/sub-staff. His working time was 9.30 a.m. to 4.30 p.m. daily. He has given the list of duties which he was performing in Stationary Department where he worked for about 6 years. According to him, he was appointed against regular vacancy and he was doing the work of regular permanent sub-staff of cleaning and sweeping the office daily. He also used to swipe the floor twice a week. He worked in Prabhadevi Branch also. He worked for 14 ½ years in the first party bank as a peon. According to him, he was doing the work of regular/ permanent sub-staff and he had worked more than 240 days in a year without break. However, neither bank regularized his services nor paid him the wages and other allowances at par with the regular sub-staff/peon. According to him, three other employees i.e. Shri. Gautam, Mariyappan and Suresh Lele were also doing the same type of work and the first party had made them permanent after 10 years continuous service. The first party has also made some other workers permanent.

7. In this respect the ld. adv. for the second party pointed out the reply given by MW-1, Mr. K.V. Marali in his cross at Ex-24. He admitted that the workman was working in Vidyavihar Branch since 22.01.1993. He admitted that he was working for 6 years. He has also admitted that the workman had worked at Prabhadevi Branch. He denied that the workman worked at Prabhadevi Branch upto 29.8.2007. He says that he worked there upto 28.2.2006. He has not denied that the workman was taking items from Stationary Department to give it to indenting branches in Mumbai. He has also admitted in his cross that the workman used to arrange the stationary branch-wise to be given to various branches. This witness has admitted in his cross that Pandurang Bhangare was the permanent sub-staff in Stationary Department when workman was working there. This witness further admitted in his cross that only one person Pandurang Bhangare was the regular Peon working in the said branch. The said branch was Vidya Vihar Branch where one Peon is not expected to arrange, maintain and supply stationary items to various branches, and do the other work of Peon in the branch. It indicates that the first party must have availed the services of the workman. These admission and circumstances on record support the version of the workman that he was working in Vidya Vihar Branch since 22.1.1993 for 6 years continuously and he also worked in Prabhadevi Branch upto 29.8.2007. In this respect I would also like to point that MW-1 has admitted in his cross at Ex-24 that Shri. Gautam, Mariyappa and Suresh Lele were made permanent after 10 years of service for doing the same work like the workman. This reply also indicates that workman was working as a Peon like the above referred 3 workmen who were absorbed in the service of bank as permanent employees of the bank.

8. In the light of these admitted facts and circumstances on record, it is clear that the workman was working as a sub-staff/peon with the first party bank and there exists employer-employee relationship between them. Accordingly, I decide this issue No.1 in the affirmative.

Issue No. 2:—

From the above discussions and the evidence on record, I find that the version of the workman is well corroborated by the evidence on record especially the admissions given by MW-1 in his cross-examination at Ex-24. He has admitted that 3 other workmen were made permanent after 10 years of service for doing the same work like that of the workman. It indicates that the workman was working with the first party as a Peon. There is also no reason to discard the version of the workman that he worked for 14 ½ years continuously since 1993. There is also no reason to discard his version that he had worked more than 240 days in each calendar year.

9. In the circumstances, the workman was entitled to the protection u/s 25-F of The Industrial Dispute Act, 1947. His services thus cannot be terminated without following the procedure u/s 25-F of the I.D. Act. In the case at hand, the management has not followed the procedure led down u/s 25 F of the I.D. Act. Therefore, I hold that the termination of the services of the workman is illegal and unjustified. Furthermore, it is also found that, the management has also violated Sec. 25 G of I.D. Act, as they have regularized the services of 3 other employees who had worked for 10 years and terminated the services of the workman who worked for more than 14 years. In this backdrop, I decide this issue no. 2 in the negative that the action of the management in terminating the services of the workman is not justified.

Issue No. 3:-

10. In respect of reinstatement, the Ld. Adv. for the first party submitted that there was total ban for recruitment, imposed by the Govt. and RBI. Furthermore, the workman was not appointed by following the recruitment procedure prescribed under the rules. Therefore, the workman cannot be reinstated or regularized in the services of the first party which is a Govt. Undertaking. In support of his argument, the Ld. Adv. for the first party resorted to Apex Court rulings in Account Officer (A&I) APSRTC & Ors. V/s. V.K. Ramana & Ors. 2007 II CLR 81 wherein the Hon'ble Court on the point on regularization observed that;

> "Even if the contract labourers or casual workers or ad hoc employees have worked for a long period, they cannot be regularized de hors the rules for selection, as has been held in Uma Devi's case."

11. The Ld. Adv. for the first party also resorted to another Apex Court ruling in State of H.P & Anr. V/s Ravinder Singh 2009 LAB. I. C. 866 wherein the Hon'ble Apex Court on the point observed that;

> "It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in the regular service or made permanent."

12. However in the case at hand the workman had worked for 14 ½ years. He had worked continuously for more than 240 days in each calendar year. Therefore he was entitled to the protection U/s 25 F of the Industrial Disputes Act 1947. Termination of the services of the workman, without following the procedure laid down there under, is no doubt illegal and unjustified. Furthermore the services of three other employees who had performed the work for 10 years as like workman, were regularized in the services by the first party. Whereas the services of the workman was terminated who has served for more than 14 years with the first party. It is in violation of Sec. 25 G of the I.D. Act. In this respect I would like to point out that, first party has regularized the services of the three above named employees performing same type of work like workman for 10 years. The said fact is admitted by the M.W. 1 in his cross at Ex.24. The first party is not expected to regularize the services of those three employees without provision in the rules to that effect. Furthermore there were clear vacancies of sub-staff and M.W.1 has not denied the same in his cross-examination at Ex-24. On the other hand it is the case of the first party itself that, they had not recruited the posts due to ban on recruitment imposed by the Govt. and RBI. Furthermore the work being performed by the workman was of perennial nature.

13. In 1993 when he was appointed, his name was enrolled with the Employment Exchange. He has stated to that effect in his cross-examination at Ex-17. He is from Schedule Tribe category. He has passed XIIth Std. and was eligible to be appointed as sub- staff. The first party has regularized the services of three others working like the workman. Now the first party cannot be allowed to plead that, the services of the workman cannot be regularized, as he was not appointed by following the recruitment procedure. The first party therefore also cannot rely on the above rulings as they have regularized the services of similarly placed three other workers. Therefore the ratio laid down in the above ruling is not attracted to the set of facts of the present case as management herein has authority to regularize the services of sub-staff who has worked as casual worker for a sufficient period.

14. In this respect the Ld. Adv. for the second party also pointed out that as the services of workman were terminated in contravention of Section 25 F of I.D. Act, therefore Labour Court or Industrial Tribunal can very well reinstate the workman in the service of the first party and the above referred rulings or the ratio laid down even in the case of Uma Devi would not be attracted to the set of facts of the present case. In support of her argument, the Ld. Adv. for the second party resorted to the Bombay High Court ruling in Administrator Kalyan Municipal Corporation, Kalyan V/s Alka B. Bramhe and Anr 2010 III CLR 727 wherein the Hon'ble Court observed that;

> "Whenever a daily wager has put in continuous service for more than 240 days in a year, his services cannot be terminated without complying with Section 25-F of the I.D. Act."

In that case service of the workman therein was terminated in violation of Section 25 F of the Industrial Disputes Act. Therefore the Labour Court has given direction for reinstatement and continuity of service of the workman. The Hon'ble High Court held that the judgement in the case of State of Karnataka V/s. Uma Devi 2006 II CLR 261 (SC) would not come in the way to reinstate the workman whose services were terminated in violation of Section 25-F of the I.D. Act. The Hon'ble Court in this respect in para 15 of the judgment observed that;

"The direction of the Labour Court to grant reinstatement and continuity of service and back wages to the respondent no.1 from 16/9/1991 cannot be faulted as admittedly notice or wages in lieu of notice or retrenchment compensation under Section 25 F of the I.D.Act were not tendered to the respondent no.1, workman prior to terminating her services."

15. The Ld. Adv. for the second party also resorted to Apex Court ruling in Harjinder Singh V/s. Punjab State Warehousing Corporation 2010 I CLR 884. In that case the Labour Court held that the retrenchment of workman therein was illegal and passed the award giving direction of reinstatement with 50% back wages and continuity of service. In Writ Petition by the management single Judge modified the award and in lieu of reinstatement with 50% back wages, compensation of Rs. 87,582 was granted. In appeal before Apex Court the Hon'ble Court held that, Ld. Single Judge not at all justified in entertaining new plea that Appellant has not completed 240 days service.

16. Furthermore the Hon'ble Court in respect of the implementation of Labour Legislations and the Constitutional mandate observed that;

"The Preamble and various Articles contained in part IV of the Constitution promote social justice so that life of every individual becomes meaningful and he is able to live with human dignity. The concept of social justice engrafted in the Constitution consists of diverse principles essentially for the orderly growth and development of personality of every citizen. Social justice is thus an integral part of justice in the generic sense, justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person."

In para 23 of the judgement the Hon'ble Apex Court further observed that;

"The stock plea raised by the Public employer in such cases is that the initial employment/engagement of the workman – employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The Courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood. It needs no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice and equality of status and of opportunity, the freedoms enshrined in the constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the directive principles of State policy constitute an integral part and justice due to the workman should not be denied by entertaining the spacious and untenable grounds put forward by the employer, public or private."

With these observations the Hon'ble Court set aside the order of the High Court and restored the award of the Labour Court with cost.

17. The Ld. Adv. for the second party also cited another ruling of Hon'ble Bombay High Court in Damodar Mahipat Gawande & Anr V/s. Dy. Engineer, GSDA, Buldhana & Ors. 2010 II CLR 847. In that case the workmen therein have challenged their dismissal in ULP Complaint seeking benefit of permanency in the services. The Industrial Court has turned down their request of reinstatement on the ground that petitioners failed to prove unfair labour practice by the employer. The Hon'ble High Court while setting aside the order held that, petitioners have shown that they have right to permanency flowing from Model Standing Order 4 (C). They had completed not just 240 days of continuous work but had very long service before attaining age of superannuation.

18. The Ld. Adv. for the second party further submitted that, the rulings referred on behalf of the first party based on the ratio laid down in the case of Uma Devi (supra) are not applicable to the set of facts of the present case as in the case at hand the first party had regularized services of three other similarly placed workmen. In support of her argument the Ld. Adv. for the second party resorted to recent Apex Court ruling in H.S. Rajashekhara V/s. State Bank of Mysore and Anr. 2012 (2) MHLJ 570 wherein similarly placed workman was absorbed in the service of the Bank as regular employee. The petitioner therein has also filed application and prayed to pass suitable order of appointment in his favour equivalent to the job given to another employee. In this matter the Hon'ble Court in respect of ruling of Uma Devi observed that;

"The appeal preferred by the petitioner, assailing the order passed by the Ld. Single Judge in Writ Petition no. 22324 of 2005, was adjudicated upon with reference to the decision rendered by this Court in Secretary, State of Karnataka V/s. Uma Devi & Ors. (Supra) even though the same had no relevance to the prayer made by the petitioner. The simple question raised by the petitioner was with reference to the decision of the Bank in absorbing Shri Devaraju as a permanent employee. The claim of the petitioner was founded under Articles 14 and 16 of the Constitution of India. Unfortunately the aforesaid issue was not considered even in the second round of litigation."

19. The same point is raised in the reference at hand that, the Bank had regularized the services of three other equally placed employees. In the circumstances there is no reason to deny the equal opportunity to the workman herein. Thus I hold that the rulings referred on behalf of the first party are not applicable to the set of facts of the case at hand. On the other hand the facts of the case in the above referred ruling of Rajashekhara (supra) are identical to the facts of the case at hand. Thus I hold that the workman is entitled to be reinstated and regularized in the service with continuity of service.

20. In respect of back wages it is the case of the second party that the workman is not gainfully employed and as his services were terminated illegally he should be granted full back wages. In this respect it is the case of the first party that the burden was on the workman to show that he was not gainfully employed. It was also pointed out that 'no work no wages' is the settled principle of law. Thus the workman is not entitled to any back wages. I do consider the fact that the workman is not on duty since 29/08/2007. He may be doing some petty work to meet the two ends. At the same time I would also like to point out that, he is a poor worker working for meager amount on daily wages and his services were terminated illegally. After giving conscious thought to the submissions of both the parties, to meet the end of justice, I think it proper to award 60% back wages to the workman. Accordingly I decide this issue no.3 partly in the affirmative that the workman is entitled to be reinstated in the service with 60% back wages and continuity of service. He is also entitled to be absorbed in the service of the first party as permanent sub-staff w.e.f. 21/01/1995 i.e. after expiry of probation period of two years from the date of his initial appointment. Thus, I proceed to pass the following order:

ORDER

1. The reference is partly allowed with no order as to cost.
2. Action of management in terminating the services of the workman is found not justified.
3. The management is directed to reinstate the workman with 60% back wages from 29/08/2007 and continuity of service.
4. The management is also directed to absorb the workman as their permanent employee w.e.f. 21/01/1995 and pay the difference in the pay and allowances till 28/08/2007.

Date : 13/12/2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1654.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 51/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/32/2007-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1654.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Allahabad Bank and their workmen, received by the Central Government on 30/05/2014.

[No. L-12012/32/2007-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 51/2007

Ref. No. L-12012/32/2007-IR(B-II) dated: 28.09.2007

BETWEEN

Shri Kapaldev Tiwari
S/o Shri Tribhuvandutt Tiwari
R/o Birwa Fakir, Post Office, Distt. Gonda
Gonda (U.P.)

AND

The Regional Manager
Allahabad Bank
Regional Office, Bhariech Road, Gonda
Jamthara Branch
Gonda (U.P.)

AWARD

1. By order No. L-12012/32/2007 - IR (B-II)) dated: 28.09.2007, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Kapaldev Tiwari, S/o Shri Tribhuvandutt Tiwari, R/o Birwa Fakir, Post Office, Distt. Gonda, Gonda (U.P.) and the Regional Manager, Allahabad Bank, Regional Office, Bhariech Road, Gonda, Jamthara Branch, Gonda (U.P.) for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF ALLAHABAD BANK IN TERMINATING THE SERVICES OF SHRI KAPIL DEV TIWARI S/O SHRI TRIBHUVAN TIWARI AS DAILY WAGER FROM SERVICES W.E.F. 14.03.2006 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT

RELIEF THE CONCERNED WORKMAN IS ENTITLED?"

3. The case of the workman, Kapil Dev Tiwari, in brief, is that he was appointed as peon on 14.02.2000 and worked continually as such up to 14.02.2000 when his services have been terminated by the management, orally, without assigning any reason, in violation to the provisions of labour Acts. The workman has further stated that he worked continually for six years as peon/messenger and had become eligible for being permanent; but the management instead of making him permanent, terminated his services; which is covered by the definition of 'retrenchment' but the management has not followed the conditions precedent to retrenchment. The workman has also alleged that the management is in practice of a policy in not letting anyone become permanent by terminating him after some time and engaging the new face. Accordingly, the workman has prayed that he be reinstated in service with continuity and other consequential benefits including back wages.

4. The management of the Allahabad Bank has disputed the claim of the workman and filed its written statement; wherein it has stated that the workman had never been appointed by the Bank inasmuch as all the recruitment of Class IV is done according to Bank's circularized instruction, Government of India guidelines and mandatory provision of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. The workman has never undergone the procedure prescribed under Rules for appointment of Class IV staff; and any appointment/engagement made contrary to the Rules would amount to back door entry. It is also submitted that the documents relating to working days are manipulated and has denied the working of the workman with the Bank. Accordingly, the Bank management has prayed that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The workman has filed its rejoinder whereby he has stated nothing new apart from reiterating his averments already made in the statement of claim.

6. The workman has filed documentary proof in support of his claim; whereas the management has filed none. The workman has examined himself whereas the management examined Shri Ashok Kumar Saxena, Manager (Retd.) and Shri Santosh Kumar Mishra, Manager in support of their stands. The parties availed opportunity to cross-examine the each other's witnesses apart from availing opportunity to forward oral arguments.

7. Heard representatives of the parties and perused entire evidence on record and gone through respective pleadings of the parties.

8. The authorized representative of the workman has argued that the workman worked with the opposite party for more than six years since 14.02.2000 and had become entitled for getting regularization; but the management of the bank adopted colorable exercise and to deprive him of the regularization, terminated his services without assigning any reason in violation to the provisions of the Industrial Disputes Act, 1947. He has further argued that the termination of the workman after having worked for six years comes under the definition of retrenchment; but the management has not complied with the conditions precedent the retrenchment; hence, the management has acted illegally.

9. In rebuttal, the authorize representative of the management has contended that there was no relationship of employer and employee between the Bank and the workman and the workman was neither been appointed by the management nor was paid for the same at any point of time. He has also argued that the workman never under gone through the regular selection process of the post of peon and as per law of the land any person engage in violation of statutory rules/regulations/circulars/norms provide for the process of recruitment of any post , would be illegal. It has relied on 1997 Lab 578 (SC) Ashwani Kumar and others vs. State of Bihar; and 2001 (91) 824 Pramod Kumar vs State of Bihar.

10. I have given my thoughtful consideration to the arguments forwarded by the learned representatives and scanned entire evidence available on record in the light of the aforesaid rival contentions of the parties.

11. The workman has come up with the case that he has been appointed a peon by the Bank and worked for six years; and the Bank instead of making him permanent terminated his services, which was in fact 'retrenchment'. In rebuttal, the management has taken stand that there is no relationship of employer and employee between the bank and the workman. The management has also pleaded that there is prescribed procedure for recruitment of class IV employee in the Bank; and the workman never under gone the channel of recruitment; therefore, any appointment against due procedure shall be deemed to be illegal.

12. The workman in his cross-examination has stated that he neither received any appointment letter from Employment Exchange nor received any letter for interview from the Bank. He stated that paper No. 5/14 is his appointment letter. On the other hand the management witness, Ashok Kumar Saxena stated that he worked in the Gonda Branch from 2001 to 2004; but the workman never worked in the Bank. He also denied his signatures on paper No. 5/14. Moreover, he also disputed the genuineness of the stamp on it. MW-2, Shri Santosh Kumar Mishra stated that he worked in Jamghara branch from May, 2004 to July, 2007 and he also denied that the workman worked in the branch from 14.02.2000 to 13.03.2006.

13. Admittedly no appointment letter was issued to the workman also there is no iota of evidence that the workman had been engaged with the Bank following due procedure for appointment/engagement of the Peon. The workman has relied on paper No. 5/14 as his appointment letter whereas the alleged signatory of the letter, in his evidence before this Tribunal, has not only denied his signatures; but also has stated that the stamp of the bank inscribed on it seems to be fake. The workman has come up with a case that he worked continuously from 14.02.2000 to 14.03.2006 for more than six years even then his services have been terminated/retrenched in violation to the provisions of the Industrial Disputes Act, 1947. In 2005 (107) FLR 1145 (SC) Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai Hon'ble Apex Court came to the conclusion that where the workman failed to prove that he had been in employment with the employer for a period of 240 days uninterruptedly, he is not entitled to protection in compliance of section 25- F of the Industrial Disputes Act, 1947. It was held by the Hon'ble Supreme Court that the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

> "The claimant, apart his oral evidence has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under section 25-F of the Industrial Disputes Act. It is now well settled that it is for the claimant to lead evidence to show that he in fact worked for 240 days in a year preceding his termination."

Therefore, in view of the above referred case law, in order to take any relief for non-compliance of mandatory provisions contained in section 25-F of the Act, it is necessary for the claimant to lead evidence to the effect that he was actually in employment of the opposite party for 240 days in the year preceding his termination and he was actually paid for it. In the instant case there is no iota of evidence to show that the workmen worked for 240 days with the management of the Bank in twelve calendar months preceding the date of termination. The workman has filed photocopy of few working certificates and statements in respect of his working with the opposite party; but they do not suffice the need. The certificate filed by the workman, paper No. 5/12, regarding working from 14.02.2000 to 05.06.2001 is of no use even taken into account as the alleged date of termination of the workman is 14.03.2006 and there is no document to show that he worked for 240 days in the twelve preceding months from the date of termination i.e. from 12.03.2005 to 13.03.2006. Likewise paper No. 5/14, the so called appointment letter and paper No. 5/15 regarding instructing the workman to work w.e.f. 03.01.2006 in Jamthara branch of the bank does not give any evidence that the workman was in employment of the Bank in the twelve preceding months from the date of termination. On the contrary the management has denied his engagement with it out rightly and has pleaded that there was no relationship of employer and employee between the Bank and the workman. Hence, it was incumbent upon the workman to come forward with the evidence that he actually worked with the Bank. The documents filed by the workman are denied by the management witnesses; hence it was for the workman to summon the working details from the Bank i.e. Muster Roll and payment vouchers to substantiate his version that there was employee and employer relationship between him and the Bank and he worked with the bank continuously for 240 days in twelve calendar months preceding the alleged date of termination i.e. 14.03.2006; but the workman has utterly failed to do so.

14. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he had worked for six years and his services were terminated/retrenched illegally. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that he had in fact worked up to 240 days in the year preceding his alleged termination. In (2002) 3 SCC 25 Range Forest Officer vs. S.T. Hadimani Hon'ble Apex Court has observed as under:

> "It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

15. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow:

> "It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a

given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/ workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

In the present case the workman has stated that he has worked continuously for six years, but has not corroborated the same with cogent evidence. In order to claim the benefit of the provisions contained in the Section 25 F of the Industrial Disputes Act, 1947, the burden was on the workman to show by the way of cogent evidence that he actually worked for 240 days in the preceding 12 months from the date of his alleged termination; but he failed to do so.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year preceding the date of alleged termination was on the workman but he failed to discharge the above burden. There is no reliable material for recording findings that the workman had worked for 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

16. Accordingly, in view of the law cited and discussions made hereinabove, the reference under adjudication is answered positively with observation that the action of the opposite party in terminating the services of the workman w.e.f. 14.03.2006 is neither illegal nor unjustified and the workman, Kapil Dev Tiwari is not entitled to any relief.

17. The reference under adjudication is answered accordingly.

18. Award as above.

Lucknow, 1st January, 2014

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1655.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरिएंटल बैंक ऑफ कॉमर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ सं. 2/24/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/15/2006-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1655.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/24/ 2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-II, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of Oriental Bank of Commerce, and their workmen, received by the Central Government on 30/05/2014.

[No. L-12012/15/2006-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K.B. KATAKE, Presiding Officer

REFERENCE NO.CGIT-2/24 of 2006

EMPLOYERS IN RELATION TO THE MANAGEMENT OF ORIENTAL BANK OF COMMERCE & ANR.

(1) The General Manager
Oriental Bank of Commerce, Regional Office
Mumbai South, Maker Tower 'F'
14th floor, Cuffe Parade
Mumbai-400 005.

(2) Shri Y. S. Rao,
Chief Executive Officer
M/s. Global Corporate Services Pvt. Ltd.
Plot No.118-A, 5th floor
Mandani Complex, Raj Bhavan Road
Near Yeshoda Hospital, Somagee Guda
Hyderabad-82 (AP)

AND

THEIR WORKMEN.
Shri Santosh Mulaje & 14 ors.
C/o. Narsaiah S. Deeti
116/9, Jijamata Nagar
Teen Dongri, Goregaon (W)
Mumbai-400 090.

APPEARANCES :

FOR THE EMPLOYER (1) : Mr. T. Vijay Kumar, Advocate.

FOR THE EMPLOYER (2) : No appearance.

FOR THE WORKMEN : Mr. V. B. Joshi, Advocate.

Mumbai, dated the 20th December, 2013

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-12012/15/2006-IR (B-II), dated 25.04.2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following Industrial Dispute to this Tribunal for adjudication:

> "Whether any relationship of employer and employee exists between the management of Oriental Bank of Commerce and S/Sh. Santosh Mulaje, Nagula Ranjan, Mota Rajaiah Malai, Vinod Patil, Bijay Gowda, Prakash Chavan, Rahul Kumar Valmiki, Gangaram Garige, Satish R. Madas, Korimeely Achaboi, Kamal Ahmed, Arul Rajan, Anand Pande, Rajaiah Kalluri and Narsaiah Deeti? If yes, whether the action of the management in terminating their services w.e.f. 28.06.2005 is justified? If not, what relief these fifteen workers are entitled to ?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party workmen filed his statement of claim at Ex-6. According to the second party the first party no.1 is a Corporate Body under Banking Act and Government of India Undertaking. Whereas the first party no.2 is providing jobs to the persons in their company who were also running Global Trust Bank and recruiting the staff since 2001 for Global Trust Bank. These 15 workmen were appointed as Drivers at various branches at the respective dates and pays as mentioned in the statement of claim. They were working for Global Trust Bank since 1994 till August, 2005. Some of them have worked continuously for about 11 years. Period of each Driver varies as per his date of recruitment. In the year 2004 the Global Trust Bank was amalgamated with the Oriental Bank of Commerce and the scheme to that effect was sanctioned by Government Notification dt. 13.8.2004. The staff of erstwhile Global Trust Bank was accepted by the Oriental Bank of Commerce. Even after amalgamation the workmen worked with the Oriental Bank of Commerce for about a year. Thereafter services of these workmen were terminated. The workmen raised industrial dispute before ALC (C). As the conciliation failed on the report of ALC (C), the Ministry of Labour & Employment, Govt. of India sent the reference to this Tribunal. The workmen pray that the first party no.1 be directed to reinstate them in the services with full back-wages, with continuity of service and consequential benefits.

3. The first party no.1 resisted the statement of claim vide their written statement at Ex-7. According to them the workmen herein are neither employees of the Global Trust Bank nor of the Oriental Bank. According to them they were employees of Global Corporate Services Pvt. Ltd. who was a contractor of the Global Trust Bank. They further contended that these drivers were employed by Global Corporate Services Pvt. Ltd. and they were used as personal drivers for Executives of the Bank employed through outsourcing agency. These employees of Global Corporate Services were never taken over by the Oriental Bank of Commerce in the amalgamation. There was no employee-employer relationship between these workmen and either with the Global Trust Bank or with the Oriental Bank of Commerce. These workmen have filed similar proceeding at Hyderabad in which Global Corporate Services Pvt. Ltd. was one of the parties. The said claim of the second party was dismissed. For all these reasons they are not entitled to the reliefs claimed for. The first party therefore prays that the reference be dismissed with cost.

4. The second party workmen have filed their rejoinder at Ex-8. They reiterated the contents in the statement of claim and denied the allegations made in the written statement and pray that the reference be allowed.

5. Following are the issues for my determination. I record my findings thereon for the reasons to follow.

Sr. No.	Issues	Findings
1.	Whether there exist employer-employee relationship between the workmen and first party Bank?	Yes
2.	If yes, whether the action of management in terminating their services is justified?	No
3.	If no, whether the workmen are entitled to be reinstated with full back wages as prayed for?	Yes.
4.	What Order?	As per order below.

REASONS

Issue No. 1

6. In this respect, it is the case of the first party that the workmen under reference are not their employees. They were also not employees of the erstwhile M/s. Global Trust Bank. According to them, these employees were contract labourers engaged through M/s. Global Corporate Services. Whereas it is the case of the workmen that they were appointed as a Driver in the Global Trust Bank on the respective dates and pay mentioned in the statement of

claim. In this respect the Ld. Advocate for the first party pointed out that all the workmen had admitted in their cross that they were appointed by M/s. Global Corporate Services and their services were also terminated by the said contractor. Therefore, according to them, there was no employee-employer relationship between these workmen and the first party No.1. In this respect, the Ld. Advocate for the second party submitted that these workmen not only served for Global Trust Bank even after amalgamation of the said bank with the Oriental Bank of Commerce. They worked as drivers for one more year as they were working with the Global Trust Bank. The Ld. Adv. submitted that the agreement of labour contract is false and bogus and mere camouflage. It was further pointed out that these drivers were working years together as their job was of perennial nature and they were working against clear vacancies of drivers. It is further contended that these workmen are very needy, poor and poorly educated persons and the management seems to have taken disadvantage of the situation. Such cases are not uncommon. In this respect the Hon'ble Apex Court has also taken note of such condition of poor, needy workers in our country. In Bhilwara Dughd Utpadhak Sahakari S. Ltd. V/s. Vinod Kumar Sharma & Ors. 2011 III CLR 386 (SC) wherein the Hon'ble Court has taken care of all such circumstances and observed that;

> "Labour Statutes were meant to protect the employees/workman because it was realised that the employers and the employees are not on an equal bargaining position. Hence protection of employees was required so that they may not be exploited. However this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of workmen under various labour statutes by showing that the concern workmen are not their employees but are the employees/ workmen of a contractor, or that they are merely daily wage or short term or casual employees. When infact they are doing the work of regular employees. This court cannot countenance such practice anymore. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers."

7. In the case at hand as observed herein above that the workmen were engaged by the erstwhile Global Trust Bank as Drivers for their officers. It seems that they have shown these workmen as employees of contractor. Infact they were working for the Global Trust Bank. They worked for years together. Some have worked for 3 years. Some have worked more than that. Even after amalgamation of Global Trust Bank with Oriental Bank of Commerce, these workmen continued in the service of the Oriental Bank for about a year. Their work is of perennial nature. They were working continuously for years for the Global Trust Bank and they have also worked for one year continuously for Oriental Bank of Commerce. It appears that the management of Global Trust Bank and Oriental Bank have played tricks and have shown them as contract workers merely to deprive them from getting the benefit of permanency. In the circumstances and in the light of above ruling it is clear that these workmen were performing their duties as Drivers of the Executive Officers of the Company. Thus I hold that these workmen were the employees of the Global Trust Bank and after amalgamation they were the employees of the Oriental Bank of Commerce. Accordingly I decide this issue no.1 in the affirmative.

Issue No. 2 :

8. It is observed in issue no.1 above that these workmen were the employees of the erstwhile Global Trust Bank. It is the case of the second party workmen that, as per the amalgamation scheme all the workers working with Global Trust Bank were taken over by Oriental Bank. In this respect MW-1contended in his Cross Ex-75 that, the employees of Global Trust Bank working in clerical and runner boys were taken in service of Oriental Bank of Commerce. In this respect it is the case of the workmen that, some similarly placed workmen working with GTB though some other agencies were taken over by Oriental Bank. Specific suggestion to that effect was put to MW-1 in his cross at Ex-75. He replied that he does not know whether similarly placed workers as like the workers under reference of GTB were absorbed in the services of Oriental Bank in 2005. It shows that there is no specific denial of the allegation of these workmen that some similarly placed workers of GTB were absorbed by the Oriental Bank. As there is no specific denial it amount to admission. Furthermore therefore, there is no reason to discard the version of the workman that some other similarly placed workmen of GTB as like the workmen under reference were absorbed by the Oriental Bank and services of these workmen were terminated. It amounts to violation of Section 25-G of the Industrial Disputes Act. Furthermore from the evidence of these workmen it is clear that they have served with GTB for years together continuously. It has come on record that even after amalgamation these workmen have worked with the Oriental Bank continuously for one year. It shows that they have worked more than 240 days in each calendar year. Therefore they were entitled to the protection U/s 25-F of I.D. Act.

9. The fact is not disputed that the management has not followed the procedure of retrenchment as prescribed U/s 25 F of I.D. Act. So also the management has violated the provisions of Section 25 G of I.D. Act as they have taken over some other similarly placed workmen from GTB. In this back drop I come to the conclusion that, the services of these workmen were terminated illegally. Accordingly I decide this issue no.2 in the negative.

Issue No. 3:-

10. In respect of reinstatement the law is settled that when the services of workmen are terminated illegally he is entitled to be reinstated in the services. In this respect the Ld. Adv. for the first party submitted that these workmen were not appointed against clear vacancy.

Therefore these workmen are not entitled to be regularised in the services. In support of his argument the Ld. Adv. for the first party resorted to Bombay High Court ruling in Chief Executive Officer Zilla Parishad V/s. Shahezad Bee Sheikh Jamal 2001 EQ (Bom) 812 wherein the Hon'ble Court held that unless employee proves that he worked against the permanent post, he cannot be allowed back door entry in the services. In this respect from the facts and circumstances on record it is revealed that the Bank has maintained cars for their Executive Officers and instead of filling the post of Drivers they seems to have engaged these workmen on temporary basis by showing them as contract labourers. In the circumstances it cannot be said that there was no vacancy in the GTB or either in Oriental Bank. Therefore this ruling is not applicable to the set of facts of the present case.

11. The Ld. Adv. for the first party also submitted that as these workmen were not recruited by following the recruitment process they are not entitled to be regularised in public service. In support of his argument the Ld. Adv. resorted to Apex Court ruling in Secretary, State of Karnataka & ors. V/s. Uma Devi & Ors. 2006 II CLR 261 (SC)wherein the Hon'ble Court observed that;

> "It has also to be clarified that, merely because a temporary employee or casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules."

12. However in the case at hand it is found that as the management has violated the provisions of Section 25 F. of I.D. Act. Therefore these workmen are entitled to be reinstated in the services. Furthermore the management has regularised the services of some other similarly placed employees like that of the workmen and violated the provisions of Section 25 G of the I.D. Act. Therefore these workmen are entitled to be regularised in the services of the Bank. The facts in the case at hand are altogether different than the facts cited in the above referred case. Therefore the ratio laid down therein is not applicable to the facts of the case at hand. In respect of violation of Section 25 G, Apex Court ruling can be resorted to in H.S. Rajashekhara V/s. State Bank of Mysore and Anr. 2012 (2) MHLJ 570 wherein similarly placed workman was absorbed in the service of the Bank as regular employee. The petitioner therein has also filed application and prayed to pass suitable order of appointment in his favour equivalent to the job given to another employee. In this matter the Hon'ble Court while distinguishing the ruling of Uma Devi observed that;

> "The appeal preferred by the petitioner, assailing the order passed by the Ld. Single Judge in Writ Petition no.22324 of 2005, was adjudicated upon with reference to the decision rendered by this Court in Secretary, State of Karnataka V/s. Uma Devi & Ors. (Supra) even though the same had no relevance to the prayer made by the petitioner. The simple question raised by the petitioner was with reference to the decision of the Bank in absorbing Shri Devaraju as a permanent employee. The claim of the petitioner was founded under Article 14 and 16 of the Constitution of India. Unfortunately the aforesaid issue was not considered even in the second round of litigation."

13. In short, the ratio laid down in the case of Uma Devi (Supra) is not attracted to the set of facts of the present case as in the case at hand some other similarly placed workmen were regularised in the service of the first party and the same opportunity was denied to the workmen under reference. The said action of the first party is arbitrary and discriminatory and it also violates the provisions of Section 25 G of the I.D. Act. Therefore I hold that the workmen are entitled to be reinstated in services.

14. In respect of back wages the Ld. Adv. for the second party submitted that as services of these workmen were terminated illegally, these workmen suffered great financial loss and inconvenience. Therefore they are entitled to get full back wages. As against this it was submitted on behalf of the first party that, the workmen have not led any evidence to show that they are not gainfully employed. Furthermore it was pointed out that 'no work-no wages' is the settled principle of law. In this respect I would also like to point out that the workmen under reference are the trained Drivers and they are not expected to sit idle after the termination of their services. At the same time I also take note of the fact that they may not have earned sufficient or equal to their pay by working as casual or private drivers. After giving conscious thought to the facts, circumstances and the arguments on record to meet the end of justice I think it proper to grant 20% back wages to these workmen from the date of their termination till the date of their reinstatement. Thus I partly allow the reference and proceed to pass the following order:

ORDER

(1) The reference is partly allowed with no order as to cost.

(2) The termination of services of workmen under reference is declared illegal.

(3) The first party no.1 is directed to reinstate and regularize the services of these workmen as Drivers and pay the back wages @ 20% of their pay & allowances with continuity of service and all consequential benefits.

Date : 20th December, 2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1656.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल इन्शुरेंस कंपनी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 65/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-17012/58/1997-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1656.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/1998) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of National Insurance Company, and their workmen, received by the Central Government on 30/05/2014.

[No. L-17012/58/1997-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/65/98

PRESIDING OFFICER : SHRI R.B.PATLE

Shri Umesh Bharani,
S/o Shri Jugal Kishore Bharani,
65, Panchvati, Jankinagar, Indore .....Workman

Versus

Regional Manager,
National Insurance Company Ltd.,
Apollo Tower, 4th Floor,
2 M.G. Road, Indore .....Management

AWARD

Passed on this 28th day of February, 2014

1. As per letter dated 31-3-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-17012/58/97-IR(B-II).The dispute under reference relates to:

> " Whether the action of the management of National Insurance Co. Ltd. in terminating the services of Shri Umesh Bharani, S/o Jugalkishore Bharani w.e.f. 12-6-96 is legal and justified? If not, to what relief the said workman is entitled?"

2. After receiving reference notices were issued to the parties. Ist party workman filed Statement of claim at Page 2/1 to 2/5. Workman submits that he was employed as Assistant Typist in IInd party office at Gwalior in 1991. He was working with diligence. In 1994, he had requested for his transfer from Gwalior to Indore because of illness of his wife. Chargesheet was issued to him on 3-2-95 for allegation of unauthorized absence. False enquiry was made, workman had given reason for his absence. His wife was ill. Enquiry Officer reported that the reasons were false. On concocted report of Enquiry Officer, he was removed from service. Workman has contented that he was not given opportunity to cross-examine witnesses Shri B.K. Gupta, D.D. Saxena. That charges against him were not proved. The punishment imposed against him is harsh and disproportionate. The punishment is illegal. On such ground, workman prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 8/1 to 8/4. The claim of workman is denied. It is denied that workman was working with diligence. It is denied that workman was apprising the management about the illness of his wife. That transfer of employee is not a right. The management has to take decision as per exigency. The employees cannot trust employees for their transfer. The convenience of the management is vital in the matter of transfer. IInd party denies that enquiry was not properly conducted. Opportunity to cross-examine witnesses is denied to the workman. That the burden to prove justification for absence from duty lies on workman. All other adverse contentions of workman are denied. IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of National Insurance Co.Ltd. in terminating the services of Shri Umesh Bharani, S/o Jugalkishore Bharani w.e.f. 12-6-96 is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed.

REASONS

5. Though the workman is challenging termination from service filing statement of claim, he has not participated in the reference proceedings. No evidence is adduced in support of his claim. Though the case was adjourned to exparte evidence of management, management of IInd party also did not participate in reference proceeding. No evidence is adduced by management. Thus both parties failed to participate in reference proceeding. Workman has failed to establish that his termination from service suffers from illegality. Therefore I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

(1) The action of the management of National Insurance Co.Ltd. in terminating the services of Shri Umesh Bharani, S/o Jugalkishore Bharani w.e.f. 12-6-96 is legal and proper.

(2) Ist party workman is not entitled to relief prayed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1657.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (245/89) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 प्राप्त हुआ था।

[सं. एल-12012/271/89-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1657.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 245/89) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Union Bank of India and their workmen, received by the Central Government on 30/05/2014.

[No. L-12012/271/89-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/245/89

PRESIDING OFFICER : SHRI R.B.PATLE

Shri Sanjay,
S/o Shri Yogoeshwar Sirsikar,
14, jawaharnagar,
Nagpur .....Workman

Versus

Regional Manager,
Union Bank of India,
Regional Office,
Near Jyoti Cinema,
Napier Town, Jabalpur .....Management

AWARD

Passed on this 25th day of February 2014

1. As per letter dated 28-11-89 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/271/89-D-2(A). The dispute under reference relates to:

> "Whether the action of the management of Union Bank of India in terminating the services of Shri Sanjay S/o Shri Yogeshwar Sirsikar is justified? If not, to what relief is the workman entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 2/1 to 2/11 . Case of Ist party workman is that he was appointed as clerk in IInd party Bank vide order dated 20-8-87 after his selection by banking service recruitment board. He joined service in the Bank on 23-9-87 at Garhakota branch, Distt. Sagar MP. That his services were terminated vide communication dated 21-3-88 which was served on him on 22-3-88. The termination order was issued as per clause IV of the appointment letter. That order of his termination is illegal. Clause IV of appointment letter provides power to the Bank to terminate services of the employee during probation period by giving one month's notice or one month's pay in lieu of notice. Workman can resign from service giving 14 days notice to the Bank. That his services could not be terminated invoking powers under Clause IV of the appointment letter. That he was ceased to be a probationer on 30-3-88. It being a Sunday, his services were automatically confirmed on 19-3-88. Workman also desires to refer bipartite settlement and awards governing services of the banking. That the award stipulates six months probation period could be extended if his performance during probation period is not found satisfactory. Extension of probation period could be after issuing notice. That Sastri Award laid down terms of completion of six months probation period, the services are confirmed.

3. Workman further submits that his services could not be terminated in the arbitrary and high handed manner. Notice for termination was not served on him. He was not given opportunity showcause against termination. Any enquiry was not conducted against him. The termination of his service is in colourable exercise of powers by IInd party. The dispute was raised before conciliation authority. IInd party had files reply before conciliation officer. The allegations were false. It is reiterated that the workman was terminated without enquiry, without giving opportunity for defence. His services could not have been terminated without objective conclusions based on materials and performance in service. That the order of his termination caused stigma against him as such of punitive nature. The termination of his services without conducting enquiry is illegal. That his service record was unblemished. On such ground, workman prays for his reinstatement with back wages.

4. IInd party filed Written Statement at Page 6/1 to 6/13. Preliminary objection is raised by IInd party that Government of India has exceeded it is jurisdiction while referring dispute to this Tribunal. That Govt. of India did not take care that the workman had intention to cheat the Bank producing false caste Certificate claiming that he belong to ST. that reference is made without applying mind. IInd party did not dispute that services of workman were terminated by Regional manager of the Bank vide order dated 21-3-88. That termination order is legal. Workman

was appointed as per order dated 28-8-87 in the Reserved Quota for ST. as per specific terms in the appointment order accepted by workman, he was posted at Garhakota branch of the Bank from 23-9-87. It is submitted that the probation period of workman ended on 22-3-88. The termination order was served on the last day of his probation period. Termination order was issued as per Clause IV of the appointment letter. It is reiterated that termination of workman is legal. There is no substance in contentions of workman. There is no provision for automatic confirmation of the employee. The confirmation is subject to Clause-III of appointment letter. Confirmation is based only on conduct, behavior and performance of the employee is found satisfactory. That Para 495 of the Sastri Award doesnot apply. It is nature of recommendation.

5. Management submits that workman had concealed material facts and secured job fraudulently claiming that he belong to ST. workman had also suppressed material information about his prosecution in criminal case. The termination order is issued considering the acts committed by the workman. Such person cannot be continued in service. There is no need to hold Departmental Enquiry against probationer. The terms of appointment were accepted by workman.

6. In additional pleadings, IInd party submits that workman was appointed as clerk in the Bank on 28-8-87 . His appointment was made after selection process conducted by Banking service recruitment Board against Reserved SC/ST category. Clause-III of the appointment letter provides for six months probation period, clause-IV provides for termination of service giving one months notice during probation period. The selected candidates are required to fill prescribed form. Workman had also filled prescribed form but material information about his criminal case was suppressed. Complaint was received that workman was prosecuted for illicit production of liquor. He was arrested by police, criminal case was pending before the JMC, Umred, Distt. Nagpur. Complaint was also received that workman fraudulently claimed he belong to ST community. The matter was inquired through vigilance cell and found that workman was prosecuted for production of illicit liquor. He fraudulently obtained caste certificate as Halba-ST. therefore the services of workman were terminated. On enquiry from authorities, information was received that Halba is not a ST. the order of his termination is legal.

7. Ist party workman filed rejoinder at Page 8/1 to 8/4. Workman has reiterated his contentions in Statement of claim that termination of his service without notice or enquiry is illegal. His probation period was completed. His services could not be terminated under Clause IV of the appointment order. That caste certificate was issued by State Umred on 19-8-81. In school leaving certificate, his caste is shown Halba was accepted to be valid. That termination of his service for gross misconduct without enquiry is illegal. On such ground, workman prays for reinstatement.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Union Bank of India in terminating the services of Shri Sanjay S/o Shri Yogeshwar Sirsikar is justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

9. Workman is challenging termination of his service as per order dated 20-3-88. His material contentions are denied by the management. Workman filed affidavit of his evidence reiterating most of his contentions in his Statement of claim. He has stated that the Caste certificate was issued by Executive Magistrate, Umred on 19-8-81. Said authority had also issued Caste Certificate on 21-9-88. He has produced School Leaving Certificate and certificate issued by State of Maharashtra dated 31-7-87 providing that Halbas are concerned, the school leaving certificate should be accepted as valid proof for the purpose of their caste. He joined service on 23-9-87. His services were terminated on 20-3-88 in terms of Clause-IV of the appointment letter. That his service record was unblemished. He had completed probation period. Termination of his service without enquiry is illegal. That he was not served one months notice or paid one months pay in lieu of notice.

10. Workman in his cross-examination says that he was selected by Banking Recruitment Board for post of clerk cum cashier. He had take charge on 21-9-87 at Garhakota branch, Distt. Sagar. His services were terminated from 22-3-88 as per Document D-2 received by him. That Form D-3 was filled by him on 5-9-87 before filling said form he had read Para A,B of the said document. He affixed his photo and signed on it. He claims ignorance about complaint submitted by Shri Vinod Umredkar Document D-4. He denies that before joining service in Bank, he was carrying illicit liquor business. He has stated that he doesnot belong to Halba caste. That while submitting Document D-3 inadvertently he had not written about his prosecution in criminal case. He claims ignorance about letter issued by Government Exhibit D-9. He has produced School leaving certificate Exhibit D-7, caste certificate issued by Executive Magistrate D-8. I will deal with document produced on record at later stage.

11. Management's witness Shri K.Venkatesh filed affidavit of his evidence stating about appointment of

workman in Bank. The terms in the appointment letter provided for six months probation period of his service could be terminated giving one months notice or pay in lieu of notice. That the workman doesnot belong to ST category. Workman submitted undertaking in prescribed form suppressing material information. He claimed that he belong to Halba Caste(ST). that workman was prosecuted for illicit liquor before JMC , Umred, Distt Nagpur. In his cross-examination, witness says service of workman was terminated as he had produced false caste certificate. It falls under misconduct. As per his information certificate was produced at the time of his appointment. If any infirmity is found in appointment during probation period, the services could be terminated giving one months notice. Workman was in probation period. He was paid one months salary instead of issuing notice. However no document about payment of salary is produced. Except caste certificate, there was no other charge against him. Management's witness claims ignorance what was the probation period of workman.

12. The evidence of management's witness clearly shows that workman was paid one month's salary instead of giving one months notice, no enquiry was conducted against workman. His services were terminated as per Clause IV of the appointment letter. The appointment letter Exhibit M-1 provides for termination of service giving one months notice during probation period. Clause III of appointment letter provides six months probation . Evidence of workman is not challenged that he joined duties on 23-9-87. Prescribed form submitted by workman is produced at M-2. The Caste of workman is shown Halba. Undertaking is submitted along with Exhibit M-2. Workman state his caste as Halba. The complaint received by Bank is produced at M-3 but statement of complaint was not recorded, no enquiry was conducted. Letter received from Director of SC/ST Exhibit M-4 that Koshti community is not included as ST in State of Maharashtra and w.r.t. Halba, the Bank authority were requested to contact the Director, Tribal Research and Training Institute Queens Road, Pune. The evidence of management's witness is silent whether Bank's authorities had taken any steps to get information from Director,Tribal Research and Training Institute Queens Road, Pune. The letter Exhibit M-4 dated 8-9-88 i.e. subsequent to the termination of service of workman from 22-3-88. The document Exhibit M-6 is termination letter is not disclosing the reason for termination of his service for production of bogus caste certificate or his prosecution in criminal case of illicit liquor business. The document Exhibit M-7 the order passed by the Committee for scrutiny and verification of tribe claims, Nagpur is dated 14-5-01 i.e. subsequent to the termination of services of workman. Reference No.2 in said order is dated 5-7-96 passed by Hon'ble High Court of Judicature at Mumbai, bench at Nagpur in W.P.No. 499/84, no evidence is produced on record who had filed W.P.No. 499/84 but it is clear from the reference that even before appointment and termination of the services of workman, said WP was pending in High Court.

13. The evidence of management's witness shows that vigilance cell had made enquiry and found that workman was prosecuted in criminal case. He had submitted fraudulent Caste Certificate claiming to be Halba Caste (ST),who conducted enquiry from vigilance cell is not examined as witness. The report submitted by Vigilance cell is not produced on record. The evidence of management's witness K.S.Venkatesh is absolutely silent about the report of vigilance cell of the Bank. His evidence is also silent as to who had decided that Caste Certificate produced by workman was bogus or fraudulent. Management's witness himself had not taken such decision. As per evidence in cross-examination of management's witness, services of workman were terminated for production of bogus caste certificate, there was no other charge. Workman was not served with any notice, no chargesheet was issued to him even his explanation was not called about the caste certificate submitted by him. The appointment order Exhibit M-1 is silent that the workman was appointed in reserved category, only declaration form Exhibit M-2 workman had shown he belong to ST Halba, no documents are produced by management that workman was selected by Banking Selection Board in ST category. Before termination of his services absolutely there was no evidence that the Caste Certificate submitted by workman was fraudulent. Workman has produced School Leaving Certificate, Caste Certificate issued by Executive Magistrate Umred, circular issued by Govt. of Maharashtra dated 31-7-87 that in so far as Halba are concerned, the school leaving certificate should be accepted as valid proof for the purpose of their caste. The workman has also produced copy of the order of discharge passed by JMC Umred in Criminal case. At the time of termination there was absolutely no evidence with management that Caste Certificate produced by workman was fraudulent or invalid. The termination of workman was not justified in the circumstances.

14. Management has produced copy of document Exhibit M-7 Caste Certificate of workman has been cancelled as per order dated 14-8-01. Workman has not adduced any evidence that said order is set-aside by the competent forum. In pursuance of said document as workman donot belong to ST, the caste Certificate is cancelled. Said fact cannot be ignored. However for the reasons discussed above, termination of services of workman is illegal. I therefore record my finding in Point No.1 in Negative.

15. Point No.2- in view of my finding in Point No.1, termination of workman is illegal. There was no evidence with the management that Caste Certificate of workman was invalid or fraudulent when his services were

terminated on 22-3-88. Caste certificate of workman is cancelled on 14-5-01- document Exhibit M-7.

16. The learned counsel for workman has relied on

"Judgment in W.P.No. 8064/2013 by M.P.High Court. His Lordship observed that similar claims were considered by the Court in Case of Prakash Limje versus State of MP and other W.P.No. 15242/2005 which has been disposed off finally on 9-1-2012. That the Court had considered the aspect that after a decision by the Apex Court in the Case of State of Maharashtra versus Milind and others, the State Govt. has evolved a new policy on 7-3-2011. Certain benefits have been extended to those who belong to Halba/koshti community as are granted to the members of the ST community as are granted to the members of the ST community. It is clear from the above the Halba community is also granted certain benefits. However judgment in Prakash limje versus State of Maharashtra is not made available. The copy of circular dated 7-3-2011 is produced by workman. Said circular provides-" guidelines issued on 10-8-2010 relating to Halba community- Caste certificate issued as ST. Such candidates appointed prior to 28-11-00 shall not be affected. However the benefit of reservation shall not be claimed after 28-11-2000.

Thus it is clear from above circular that the persons belonging to Halba community appointed in ST Reserved Category prior to 28-11-2000 cannot be denied benefit of reservation. Above circular clearly protects the claim of workman that he belong to Halba ST therefore the termination of the workman is illegal. Workman in his evidence had denied suggestion that after his termination, he was carrying liquor business. Workman in his evidence has stated that he is not employed gainfully. Though the caste certificate of workman is cancelled as per document M-7, the GR dated 7-3-2011 issued by Govt. of MP shows that the appointments prior to 28-11-2000 cannot be interfered therefore the workman is entitled for reinstatement in service. Considering the case is pending since 1989 and evidence of workman is silent how he was surviving all those long year, it is unfortunate that the dispute could not be decided all those years. Considering due to the long pendency, the workman was facing hardship, reinstatement of workman with 30 % back wages would be appropriate. Accordingly I record my finding on Point No.2.

17. In the result, award is passed as under:-

(1) Action of the management of Union Bank of India in terminating the services of Shri Sanjay S/o Shri Yogeshwar Sirsikar w.e.f. 22-3-88 is illegal.

(2) IInd party is directed to reinstate workman with continuity of service with 30 % back wages.

Amount as per above order shall be paid to workman within six weeks. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1658.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2, धनबाद के पंचाट (116/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 प्राप्त हुआ था।

[सं. एल-12011/03/2013-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1658.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 116/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-II, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 30/05/2014.

[No. L-12011/03/2013-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act.,1947

REFERENCE NO 116 OF 2013

PARTIES : The General Secretary,
Bank of India Employees Union,
C/O Bank of India,frezer Road, Patna
Vs.
Zonal Manager
Bank of India, Zonal Office,
Patna

APPEARANCES :

On behalf of the Workman/Union : Workman (Himself)

On behalf of the Management : Mr B. B. Saran, Management Representative

State : Bihar Industry : Banking

Dated, Dhanbad, the 24th Feb., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-12011/03/2013-IR(B-II) dated 15.04.2013.

SCHEDULE

"Whether the action of the Management of Bank of India to propose the punishment of dismissal was proportionate? What relief the workman was entitled for?"

2. Workman D.K.Jaiswal and Mr.B.B.Saran,the Ld.Advocate for Bank of India are present.Mr.Saran,the Ld.Advocate for the O.P./Management of Bank of India, Zonal Office,Chankya Place "R"Block,Patna in presence of the workman by filling a settlement petition today under the signatures of Zonal Manager, M.N.A. Ansari, Mr.B.B. Saran for the O.P./Management as well as under the signatures of Mr.Ramesh Pd., Gen.Secretary,the Bank of India employees' Union, Bihar State and the workman, has submitted that since the workman as the employee of the Bank had committed some acts of misconduct during his posting as C.T.O. as Maner,Branch,for which after due enquiry following his charge sheet for his misconduct, he was dismissed from the service; meanwhile the Industrial dispute through the Union was raised by the workman which failed in its conciliation proceeding before the ALC©,Patna,resulting in the reference; but at the intervention of the Union,the amicable settlement between both the parties has been made as per the order dt.08.07.2013 of the Appellate Authority as under :" The penalty of dismissal from Bank's service imposed on Shri D.K. Jaiswal by punishment Order No. ZO/PAT/IR/ VIG-84/628 dated 08.01.2013 is hereby modified to "Compulsory retirement with superannuation benefits, i.e., Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules and Regulations prevailing at the relevant time and without disqualification from future employment" in terms of Clause 6 © of the Memorandum of Settlement dated 10.04.2002,"

The workman accepted it, voluntarily

In view of the aforesaid settlement as per its terms and conditions between both the parties, let an Award be passed to that effect which shall be binding on both the parties. Thus the Case/Reference is accordingly disposed of in view of the aforesaid settlement related to the dismissal of the workman from the Bank Service as per Punishment Order dt. 08.01.2013 now modified to "Compulsory retirement with superannuation benefits… without disqualification from future employment in the terms of Clause 6 © of the Memorandum of Settlement dt.10.04.2002". The present settlement petition will be an integral part of the Award.

KISHORI RAM, Presiding Officer

SETTLEMENT

To,
The Presiding Officer,
Central Government Industrial Tribunal (NO.2),
Dhanbad

Ref. Case No. 116 of 2013

Between

Shri D.K. Jaiswal,
Represented through General Secretary,
Bank of India employees Union,

And

Zonal Manager,
Bank of India, Zonal Office,
Chankya Place,"R" Block,
Patna

Humble settlement petition filed on behalf of the parties.

Most respectfully shewth

1. That Shri D.K. Jaiswal was an employee of Bank and posted as C.T.O. at Maner Branch.During his posting at Maner Branch of the Bank he was found to have committed acts of misconduct. Accordingly, disciplinary action for gross misconduct was initiated against Shri D.K. Jaiswal, C.T.O., P.F. No. 136183 by issuing Chargesheet bearing Ref. No. ZO/PAT/IR//VIG-84/590 dated 27.10.2011 under the cover of Memorandum No. ZO/PAT/IR/VIG-84/595 dated 27.10.2011 and simultaneously enquiry was ordered for the acts of misconduct committed by him during his course of duties as CTO at Maner Branch of the Bank. The E.O. had conducted the enquiry into the Chargesheet and submitted his report dated 27.03.2012 holding the charge levelled against him as proved except one allegation.Thereafter, communication bearing Ref.No.ZO/ PAT/IR/VIG-84/175 dated 25.06.2012 proposing the punishment of "Dismissal without Notice" in terms of Para 6 (a) of Memorandum of Settlement dated 10.04.2002 to show cause on the proposed punishment .Shri D.K.Jaiswal has in the meantime raised an industrial dispute through his Union. After failure of the conciliation proceedings before the A.L.C.(C),Patna, the Disciplinary Authority passed an order of punishment "Dismissal without Notice" under Clause 6 (a) of the Memorandum of Settlement dated 10.04.2002 for the charge as contained in aforesaid Chargesheet dated 27.10.2011 found proved in the enquiry against Shri DK.Jaiswal.

2. That thereafter as mentioned aforesaid the Union intervened to bring about a peaceful settlement between them parties. Accordingly an amicable settlement between the parties was arrived at before the Appellate Authority,i.e. Zonal Manager, Bank of India, Patna.

3. That the Appellate Authority considered his appeal and accordingly the dismissal from Bank's service imposed on Shri D.K. Jaiswal by punishment order dated 08.01.2013

was modified to "compulsory retirement with superannuation benefits i.e. Pension and /or Provident fund and Gratuity as would be due otherwise under the Rules and Regulations prevailing at the relevant time and without disqualification from future employment" in terms of Clause 6 © of the Memorandum of Settlement dated 10.04.2002.

The copy of order dated 08.07.2013 passed by the Appellate Authority is annexed herewith.

4. That both the parties have deliberated over this litigation and have come to a conclusion not to proceed further in the matter of the reference before your honour.Accordingly,both the parties jointly pray before your honour to pass an order to that effect.

5. That in the facts and circumstances mentioned above the Ref.No.116 of 2013 pending before this Hon'ble Court has become non-existence, and of no use to proceed further.

It is, therefore, prayed that this Hon'ble Court may graciously be pleased to pass an Award on the basis of settlement between the parties.

And for this the parties shall every pray.

Signature of the Management	Signature of Union and workman
Sd/-	Sd/-
1. (M.N.A.Ansari) Zonal Manager Bank of India, Zonal Office, Patna	1. (Rameshwar Prasad) General Secretary Bank of India, Employees' Union, Bihar State
Sd/-	Sd/-
2. (B.B.Sharan) Advocate for Bank of India 24.2.2014	2. (D. K. Jaiswal) Ex-Staff, Bank of India 24.2.2014

नई दिल्ली, 30 मई, 2014

का.आ. 1659.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 12/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/95/2006-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1659.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 12/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-II, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Central Bank of India, and their workmen, received by the Central Government on 30/05/2014.

[No. L-12012/95/2006-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, LUCKNOW

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 12/2007

Ref. No. L-12012/95/2006-IR(B-II) dated : 12.02.2007

BETWEEN

Shri R.R. Handa
B-15, Ballabh Nagar Colony
Pilibhit.

AND

The Regional Manager
Central Bank of India
B-88, Civil Lines, Sita Kiran Hotel Building
Bareilly (U.P.) – 244001

AWARD

1. By order No. L-12012/95/2006-IR(B-II) dated: 12.02.2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri R.R. Handa, B-15, Ballabh Nagar Colony, Pilibhit and the Regional Manager, Central Bank of India, B-88, Civil Lines, Sita Kiran Hotel Building, Bareilly (U.P.) for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE REGIONAL MANAGER, CENTRAL BANK OF INDIA, BAREILLY IN TERMINATING THE SERVICES OF SHRI R.R. HANDA, DEPOSIT COLLECTOR, CENTRAL BANK OF INDIA, PILIBHIT (UP), VIDE THEIR LETTER DATED 12.08.2004 IS LEGAL AND JUSTIFIED? IF NOT, THE WORKMAN IS ENTITLED TO WHAT RELIEF?"

3. The case of the workman, R. R. Handa, in brief, is that he was appointed, in the Pilibhit branch of the Bank, as an authorized collection agent (Deposit Collector) by the Bank vide their letter dated 01.08.1978 and his terms and conditions of the employment were revised by the Bank vide letter dated 02.03.2002, in pursuance to the judgment of the Hon'ble Apex Court held that the authorized collection agents (Deposit Collectors) were 'workman' and accordingly employees of the Bank and

there was relationship of matter and servant between the bank and such Deposit Collector. It is alleged by the workman that the management all of sudden terminated his services vide their letter dated 12.08.2005, leveling a concocted and false charge of misconduct; without giving him any charge sheet, conducting any formal domestic inquiry or affording him a chance to defend himself. It is further alleged by the workman that the act of the management in terminating his services was in utter violation of the principles of natural justice as he was an employee of the Bank and his termination could have been only after following the due procedure i.e. issuance of charge sheet, holding of an inquiry and giving him a chance of self defence. Accordingly, the workman has prayed that his termination be declare illegal and the same be set aside; and he should be reinstated with continuity in service and full back wages.

4. The management of the Central Bank of India has disputed the claim of the workman by filing its written statement wherein it has submitted that the applicant assigned the task of authorized collection agent in response to a contractual agreement dated 02.08.1978. It is specifically submitted by the Bank that as per clause 15 of the said agreement, the said agreement may be terminated without any notice or assigning any reason thereof by the bank. It is further submitted that the applicant duly executed and signed the agreement, he was only an agent and not an employee of the bank, and therefore, there was no relationship of employer and employee between the Bank and applicant under dispute. It is also submitted by the Bank that Hon'ble Apex Court in its order dated 13.02.2001 has held that 'the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work', therefore, since the applicant was engaged on an individual contract vide agreement dated 02.08.1978 he cannot claim benefit of being declare as workman. The bank has submitted that it had every right to terminate the agency of the applicant in terms of the agreement and accordingly has committed no wrong. Therefore, the management has prayed that the claim of the workman is liable to be rejected without any relief to the applicant concerned.

5. The workman has filed its rejoinder; wherein he has reiterated the averments already made in the statement of claim.

6. The parties filed documentary evidence in support of their respective claim. The workman has examined himself where as the management has not examined any one in support of their case in spite of ample opportunities being availed since 27.04.2010. When no one turned up from the management to adduce the evidence, the case was fixed for arguments vide order dated 04.08.2010. The authorized representatives of the parties are absenting themselves since 08.07.2010 and are not turning up to forward their arguments, therefore, the case was reserved for award, keeping in view long pendency of the case and reluctance of the parties to contest their case.

7. I have gone through pleadings of parties and evidence available on record.

8. The case of the Bank rests on the contention that the applicant had been assigned the task of collection agent as per agreement dated 02.08.1978 and his agency was terminable without any notice or assigning any reason for the same as per clause 15 of the said agreement, hence, the applicant was not an employee of the bank. It is also the case of the management that the applicant is not workman within the provisions of 2's' of the Act.

9. Per contra, the workman has come up with the case that he was appointed as authorized Deposit Collector vide letter dated 01.08.1978 and his services were further revised vide letter dated 02.03.2002 in view of judgment of Hon'ble Supreme Court dated 13.02.2001. It is also the case of the workman that Hon'ble Apex Court vide in Civil Appeal No. 3355 of 1998 Indian Banks Association vs. Workmen of Syndicate Bank & others (2001) 3 SCC 36 declared the authorized collection agent (Deposit Collectors) as 'workman', hence it maintained the relationship of master and servant.

10. Having respective pleadings of the parties, it comes out that the management has taken objection that the applicant, R.R. Handa is not a workman under Section 2 's' of the Industrial Disputes Act, 1947; whereas the applicant, relying on judgment dated 13.02.2001 in Indian Banks Association vs. Workmen of Syndicate Bank & others. JT 2001 (2) SC 542 has contended that he is a workman with the provisions of the Section 2 's' of the Act. The Hon'ble Apex Court has observed that

> "undoubtedly deposit collectors are not regular employee of the bank but nevertheless are workers within the meaning of term as defined in the Industrial Disputes Act, 1947. The commission received by the deposit collector is nothing else but wage. Definitely the bank has control over the deposit collectors in as much as deposit collectors have to bring the collections and deposit the same in the banks by the very next day. They have to fill various forms, accounts register and pass book. They are therefore, accountable to the Bank and under the control of Bank. There is a clear relationship of master and servant between the deposit collector and the Bank."

11. In the present case, the management terminated the agency of the workman vide their letter dated 12.08.2004 with allegations of misconduct on the part of the workman on the ground that as per agreement 01.08.1978 it can

terminate the agency of workman without assigning any reason or notice and further since the workman, R.R. Honda is not a workman; hence, there is no requirement of holding any inquiry. But, since the applicant was covered with the definition of 'workman' as observed by Hon'ble Apex Court in Indian Banks Association vs. Workmen of Syndicate Bank & others. JT 2001 (2) SC 542, it was incumbent upon the management to observe due procedure before taking any action against the workman, R.R. Handa. When the management has alleged the commission of some misconduct then the explanation of the workman was required to be called for and after considering the explanation of the workman, if it was found necessary then domestic inquiry is to be instituted; and it is only after holding proper inquiry the punishment was to be imposed; but the management failed to do so. The action of the management of the Bank is a sort of termination simplicitor wherein no opportunity was afforded to the workman and he was simply terminated by an order without observing any procedure prescribed for termination of employees. Thus, the action of the management of the Bank was an arbitrary one. The contention of the management that it did not issued any charge sheet or conducted any formal inquiry for the reasons that the applicant was not 'workman' within the meaning of the Section 2 's'. In this regard it has relied on agreement dated 01.08.1978, which provide that the agency could be terminated without any notice or assigning any reason for the same; but after pronouncement of judgment dated 13.02.2001 of Hon'ble Apex Court in Indian Banks Association vs. Workmen of Syndicate Bank & others; whereby the deposit collectors were declared to be the 'workman', the agreement date 01.08.1978 became ineffective. Thus, in view of orders of Hon'ble Apex Court the deposit collectors were the employees of the Bank and the their services were terminable only after observing due procedure.

12. In view of the discussions made above, I am of considered opinion that that the action of the Central Bank of India, Bareilly in terminating the services of workman was illegal and unjustified and accordingly, the workman is entitled for reinstatement. As regard back wages, it is admitted case of the parties that the workman was allotted agency and he was paid commission on the basis of his collection. Since there was no collection during the period he was out of the service, therefore, I am of the opinion that he is not entitled for the back wages. However, he shall be entitled for continuity etc. in terms of relevant rules and agreement.

13. Award as above.

LUCKNOW

15th April, 2014

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1660.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, धनबाद के पंचाट (संदर्भ सं. 15/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/94/2009-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1660.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-I, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of UCO Bank, and their workmen, received by the Central Government on 30/05/2014.

[No. L-12012/94/2009-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D.ACT, 1947.

Ref. No. 15 of 2010

Employers in relation to the management of UCO Bank, Jorapokhar , Dhanbad

AND

Their workmen

Present : SRI RANJAN KUMAR SARAN, Presiding officer

Appearances :

For the Employers : Sri D.K.Verma, Advocate

For the workman : Sri S.N.Goswami , Advocate

State : Jharkhand Industry : Banking

Dated 9/4 /2014

AWARD

By Order No.L-12012/94/2009-IR (B-II), dated 08/02/2010, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of UCO bank Jorapokhar Branch, P.O. Patherdih, Dist. Dhanbad in discontinuing the service of Sri Hiralal @ Hari Sah from 13.11.2003 without any notice or charge of misconduct was justified ? what relief the workman will be entitled to?"

2. The case is received from the Ministry of Labour on 25.02.2010. After notice both parties appeared , the workman files their written statement on 15.03.2010. Thereafter the management files their written statement-cum-rejoinder on 12.05.2010. One witnesses on behalf of the Management is examined but two witnesses examined by the workman.

3. The short point is involved in this case is whether the workman to be taken in bank service. The admitted fact of this case is that the workman was working in the bank as peon from 16.05.1999 to 30.11.2003. It is started by the management that workman was working purely temporary basis.

4. The workman filed documents of payment, bank pass book and I.D.Card of bank (photocopy). The management admitted that the workman was rendering service. But terminating the workman without notice is completely illegal. Though the management witness in his examination in chief has stated that the workman did not work in the bank continuously for period of 240 days. Rather in cross examination of MW-1 has stated that the workman was working in the bank from 1981 to 1999.

5. The management admitted in his written statement that the workman was working in bank from 1999 to 2003. Therefore the workman was working continuously for more than 240 days in a calendar year.

6. This being the situation the workman be reinstated in the post of peon with immediate effect atleast within 30 days from the date of publication of the award in the Gazette. If the award is not implemented by the bank, then the bank is to pay the workman 30% of back wages w.e.f 16.05.1999.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1661.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ सं. 204/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-12013/109/1998-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1661.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 204/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-II, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of Bank of India, and their workmen, received by the Central Government on 30/05/2014.

[No. L-12013/109/1998-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE No. 204 OF 1999

PARTIES : The Organizing Secretary,
Bank of India Employees Union
(Bihar State) C/O Bank of India,
Fraser Road, Patna.

Vs

Zonal Manager,
Bank of India, Bihar (South Zone),
Ranchi

Ministry's Order No. L-12013/109/98-IR (B-II) dated 14.05.1999.

APPEARANCES :

On behalf of the Workman/Union : Mr. D. Mukherjee
Ld. Advocate

On behalf of the Management : Mr. S.K. Chamaria,
Ld. Advocate

State : Jharkhand Industry : Banking

Dated, Dhanbad, the 18th March, 2014.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12013/109/98-IR(B-II) dated 14.05.1999.

SCHEDULE

"Whether the denial of promotion to Sri Binod Kumar Saran by the Management of Bank of India to the Cadre of General Banking Officer Cadre J.M. Scale-I is justified, proper and legal? If not, to what relief the workman is entitled to?"

On receipt of the Order No. L-12013/109/98-IR (B-II) dated 14.05.1999 of the above mentioned reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, the Reference Case No. 204 of 1999 was registered on 10th June, 1999 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The workman and the O.P./Management through both their Lawyers appeared in, and contested the case.

2. The case of the Bank of India Employees Union for workman Binod Kumar Saran is that he has been working as a permanent employee of the Bank of India in Clerical Grade since long. At the notice dt.18.2.1993 in pursuance of the settlement dt.5.5.1980 between the Management and the Federation of Bank of India Staff Union, he with similar others submitted his application for promotion to the General Banking Officer Cadre, J.M. Scale, and also appeared at the trade test on 23.5.93.Though he passed the CAIIB-Part I examination as per the marksheet supplied to him as per the Management's letter dt.01.12.93, the Management did not consider it despite the mandatory upon it as per the terms of the settlement, he had submitted the marksheet before the date of interview. He had also represented to the Competent Authority about the wrong computation of marks under the Head Education Qualifications, but the anit-labour management unconsidered and illegally derived it arbitrarily. He was not called for interview due to the illegal miscomputation of his marks. In pursuance of the notice dt.18.2.93; the other persons were promoted w.e.f. 15.12.93, whereas the workman was also entitled to the promotion to the General Banking Officer Cadre J.M. Scale-I with all arrears of wages and other consequential benefits.

3. Further alleged by the Union Representative for the workman that again as per the notice dt.12.12.1994 of the Management in pursuance of the settlement dt. 5.5.89, he had applied for his promotion to the post, qualified for the trade test on 5.2.1995 after his appearance thereat, and appeared for interview on 2.4.1995. Though he was entitled for marks (11) eleven instead of eight (8) of for passing CAIIB Part-I, the anti-labour Management wrongly computed his marks as per its statement dt. 24.2.1996 of the marks under the head of educational qualification. In order to victimize him the Management had wrongly tabulated his marks in the Trade Test which ought to have been 32.5 in place of 32, otherwise, he would have been promoted to the post of Junior Management Grade Scale-I w.e.f. 26.6.1995. In spite of his satisfactory reply, the Management motivatedly constituted a Departmental Enquiry to harass him mentally. After due enquiry, the Enquiry Officer in his report had clearly indicated the workman to have got 32 instead of 32.5 marks due to its wrongly Tabulation, and accordingly exonerated him from all charges. Lastly, the Industrial Dispute raised by the union before the A.L.C.(C), Ranchi due to failure of the conciliation proceeding despite the Management's acceptance of the monetary benefits being received by him for completion of CAIIB Part Examination on 14.11.1992, resulted in the reference for adjudication. The action of the Management was vindictive, discriminatory, anti-labour and illegal. So the promotion of the workman to the cadre of General Banking Officer, J.M. Scale w.e.f. 15.12.1993 /26.6.1995 with seniority, all arrear of wages and consequential benefits have been urged for him.

4. Denying specifically all the allegations of the O.P./ Managment, the Union Representative in the rejoinder his alleged that the workman had timely submitted his application with marksheet in support of his passing in the CAIIB Part- I examination; moreover no alleged cut off mark was ever declared by the Management; and that the finding of the Enquiry Officer in his enquiry report about the marks 77.5, i.e.,78 secured by the workman if added for his success in the said examination was also unconsidered by the Management. The workman had submitted before the Management with retrospective effect as the only ground for denial of his promotion for non passing of the said examination.

5. Whereas the case of the O.P./Management with categorical denials is that the present reference is unmaintainable as vague in the terms of Law and facts. It is also belated for 3 years, and barred under the principles of Estoppel and waiver. The claim of the workman for promotion on the ground of marks in unentertainable in view of the specific conditions under clause 16 (d) of the Memorandum of Settlement dt.5.5.1989 as also in view of the mark sheets vide letter dt.1.12.1993 and 24.2.1996. Workman Binod Kumar Saran is a permanent employee of the Bank, and is presently working as Steno Typist (Hindi) in Clerical Grade at its Zonal Office, Ranchi. Factually the Management as per its notice dt.18.2.1993 had invited promotion from Clerical Grade to General Banking Officers Cadre Junior Management Grade Scale-I. According to the stipulation under item 5 (i) "Educational Qualification of the prescribed From, it specified the assessment of the qualification marks based on marksheet and Certificate for each of Degree, Diploma etc., and the candidate was required to attach the certified copies of all the qualification for verification and evaluation of mark secured under the heading, failing which, marks would not be allotted. The maximum marks 28 and 18 as appointed for service particulars and educational qualification respectively. The total marks were required to be mentioned by the

candidates himself on the basis of the guidelines subject to verification by the Competent Authority on the basis of documents etc. required to be enclosed along with the application. The workman had applied for the promotion in the prescribed form, but without submitting the Certificate for passing CAIIB Part-I Examination along with the application form; as such no mark was allotted to him on that count. The last date for submission of the application in prescribed form was 31.3.1993. The process of selection was completed by October, 1993, and the 15th December, 1993 was for the promotion of successful candidates. Since the workman had not submitted the Certificate in support of passing the CAIIB Part-I, its marks were unallotted to him, and his secured marks 62 (i.e. Service 24, Educational qualification 08 and Trade Test 30) was below the cut off mark 63 for General Category to which he belonged, he did not qualify for interview, he was not interviewed, so he was not promoted w.e.f. 15.12.1993.

6. Further alleged by the O.P./Management is that having realized about his being disqualified for the previous promotion, the workman did not raise any dispute for it, and subsequently participated in the next promotion process as per the notice dt.12.12.1994 in the year 1994 wherein he again disqualified for the same reasons: unsubmitting of his Certificate for passing CAIIB Part -I amounting to non-allotment of the marks for the educational qualification, and his secured only 77 (32, 26, 08 and 11 marks for his Trade Test, Service, educational qualification and interview respectively marks was below the cut off 78. The marks secured by the workman were rounded of on total, but not on the individual paper i.e., objective and descriptive. The same procedure was followed for all the candidates appearing in the examination. Thus, the workman was not promoted. The 23rd June,1995 was the last date for submission of the application, and the Final result was declared on 26.6.1995. The letter dt. 29.8.1995 of the workman written to the Secretary, the Indian Institute of Bankers clearly manifests the circumstance of his not getting his Original Memorandum (Certificate prior to the said date due to postal defects or other reason, as his having no Certificate time, so he could not file it at the relevant time; rather on the Certified Copy of his certificate for passing CAIIB – Part-I having been submitted by the workman on aforesaid 29.08.1995; he was given his monetary benefits as additional increment retrospectively from the date of passing the CAIIB –I on 14.11.1992 as per the Banking rules. But he raised not any such dispute about his non-promotion to the Officers Cadre for the aforesaid reasons to his knowledge. Besides, the promotion process from Clerical Grade to General Banking Officers Cadre, J.M. Grade Scale-I is periodically conducted and has already been done after the year 1994 on more than one occasion, he has not participated for his known reasons. He is at liberty to participate in the promotion process whenever conducted by the Management. Thus, the action of the Management in not promoting the workman to the Cadre of General Banking Officers J.M. Scale-I is justified, proper and legal. The workman is not entitled to any relief.

7. In its rejoinder, the O.P./Management has categorically denied the allegations of the workman as false, baseless and imaginary, stating that the charge sheet and enquiry relate to the matter of using unfair means in the written examination. It has not been considered in regard to the matter of promotion to the workman.

FINDING WITH REASONS

8. In the instant reference case, WW-1 Binod Kumar Saran, the workman himself for the Union concerned, MW-1 Ramakant Mishra, the Dy. Zonal Manager and MW-2 Supriya Kant Chaudhary, the Officer Bank of India, Chas (Bokaro) for the O.P./Management have been respectively examined.

Mr. D. Mukherjee, Learned Counsel for the Union/ workman has argued that workman Binod Kumar Saran (WWI) was the clerk of the Bank of India since his appointment on 10.02.1981, and was posted at D.M. Office, Ranchi; as per the Circular of the Management in the year 1993 for promotion of internal staff to the post of Officer in J.M. Scale-I, he applied in and appeared in the examination therefor, but the nonaddition of the three marks for Certificate of Indian Institute of Bankers (Part 1) in the marksheet resulted in his total marks lesser than others, depriving him of the promotion in the Office Grade J.M. Scale; likewise in the year 1994 at another Circular for the same purpose, the Management omitted to add 3 marks in his marksheet (Ext.W. 2) after his application and interview for it, so he was not considered by the Management for his promotion in the J.M. Grade Scale, though he had passed the CAIIB Examination in the year 1993/1992 (the I.I.B.'s letter dt.1.4.1998- Ext.W.4 and 7 respectively), and again, he got deprived of his said promotion, for which he submitted his representation, but it was rejected by the Management (Ext. W. 8); and lastly he raised the Industrial Dispute in the year 1998 for the claim of his said promotion in the year 1993 and 1995 (The copies of his prescribed applications –Ext.W. 9 and 10 respectively). The emphatic contention of Mr. Mukherjee is that the admission of both the witnesses of the Management (MWs 1 & 2) that the workman had passed CAIIB-I in the year 1992; Mr. Saran (the workman) has been paid additional increment for passing CAIIB-I w.e.f. 14.12.1992, so the point for adjudication narrows to the consideration if he passed the said CAIIB-1 examination before 1993 and 1995, as such in view of the aforesaid facts, evidence and documents, the workman is legally entitled for the promotion to the Cadre of the General Bank Officer J.M. Scale-I from 1993 with all arrear of wages and attendant benefits.

9. Whereas in response to it, Mr. S.K. Chameria, Learned Advocate for the O.P./Management has contended that in view of the facts evidence and documents as brought by both the parties on the case record, it stands crystal clear as established by both the Management witness MW-1 Ramakant Mishra, and MW-2 Supriya Kant Choudhary that since the workman had not complied with the submission of his passing Certificate CAIIB-I Part, an inevitable requisite along, with any of the two prescribed Applications for the promotion from the Staff to the Bank Officer Grade in J.M. Scale-I in either of the years 1993 and 1994 respectively, rather he had submitted his aforesaid Certificate on 29.08.1995 later than the declaration of the result on 26.06.1995 for even the latter year 1994 Examination, he was not promoted to the said post in lack of not getting three marks for educational qualification in any of the said Examination; hence the workman is not entitled to any relief even in view of the vague terms of the reference.

10. On perusal and consideration of the materials available on the case record, I find that the very admission of the workman in his cross examination that on both the occasions, he though submitted his marksheet, could not do the requisite "certificate of success in CAIIB, as the same was not received from the Authority as evident from his document (i.e. I.I.B's letter dt. 01.04.1998 – Ext. W. 4). Apparently such acknowledgment of the workman clearly proves his failure in submitting his requisite certificate of CAIIB along with the prescribed Form for the promotion as notified by the Management (Ext.W.1), he got disqualified for the promotion to the G.B.O. Cadre on both occasions. It was his own personal fault for it. Getting an additional increment for the workman since the date of passing his CAIIB Part-I is quite distinct from the matter under adjudication. The argument of Mr. Mukherjee learned Counsel for the Union/workman appears to be not plausible and persuasive.

In result, it is, in terms of the reference, hereby

ORDERED

That the Award be and the same is passed that the denial of promotion to Shri Binod Kumar Saran by the Management of Bank of India to the Cadre of General Banking Officer Cadre J.M. Scale-I for the year 1993 or 1994 is quite justified, proper and legal. Hence, the workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1662.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे कर्मचारी यूनियन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 55/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-41011/31/2008-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1662.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Uttar Railway Karmchari Union and their workmen, received by the Central Government on30/05/2014.

[No. L-41011/31/2008-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT LUCKNOW

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 55/2008

Ref. No. L-41011/31/2008-IR(B-II) dated: 11.12.2008

BETWEEN

Mandal Sanghtan Mantri,
Uttar Railway Karmchari Union,
283/63, KH(B), Ghari Kanora,
Premwati Nagar, Lucknow – 16

(Espousing cause of Smt. Tarawati)

AND

1. Mukhya Karkhana Prabandhak,
   Uttar Railway,
   Char Bahg, Lucknow.
2. Varishth Karmik Prabandhak,
   Uttar Railway, Char Bahg,
   Lucknow.

AWARD

1. By order No. L-41011/31/2008-IR(B-II) dated: 11.12.2008 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sanghtan Mantri, Uttar Railway Karmchari Union, 283/63, KH(B), Ghari Kanora, Premwati Nagar, Lucknow and the Mukhya Karkhana Prabandhak, Uttar Railway, Char Bahg, Lucknow and Varishth Karmik Prabandhak, Uttar Railway, Char Bahg, Lucknowfor adjudication.

2. The reference under adjudication is:

"kya uttar railway prabandhan dwara Shrimati Tarawati patni swa. Shivpal Singh ko railway board ke dinank 16.7.87 mudrit kramank sa. 9252 ke anusaar pichali tithi se family pension ka phugtaan na kiya jana nayayochit evam vaidh hai? Yadi nahi, to kaamgaar ki patni kis raahat ko pane ka hakdaar hai."

3. The case of the workman's union, in brief, is that the husband of the workman viz. Shri Shiv Pal Singh expired on 12.06.1960. The widow of Shiv Pal Singh requested the opposite party management for grant of family pension in light of P.S. No. 9252 and 8797; but no heed was paid to her request. Accordingly, the workman's union has prayed that the action of management in not allowing family pension to Smt. Tarawati be declared illegal and she be held entitled for family pension in terms of P.S. No. 9252 and 8797, with retrospective effect.

4. The management of the railways has denied the claim of the workman's union by filing its written statement; wherein it has submitted that the widow of the workman, Shiv Pal Singh was paid ex-gratia payment of Pension. It is submitted by the management that the ex-employee, Shiv Pal Singh was P.F. optee; and accordingly the family of the deceased is entitled for ex-gratia pension as per Railway Rules. It is submitted by the management that as per P.S. No. 8797, the families of only those railway servants were allowed family pension who retired or died prior to 01.01.1964 and were on pensionable establishment i.e. who had opted for pension only. Since the husband of Smt. Tarawati was P.F. optee, therefore, the widow of the workman, Smt. Tarawati was paid ex-gratia pension only and she is not entitled for family pension in terms of P.S. No. 8797. It is also submitted that P.S. No. 9252 does not change the policy of P.S. No. 8797 and the same is meant for the internal purposes to regulate the allocation of funds. Accordingly, the management has prayed that the claim of the workman's union be rejected being devoid of merit, without any relief to the workman concerned.

5. The workman's union has filed its rejoinder; wherein it has not brought any new fact apart from reiterating the averments already made by it in the statement of claim.

6. The workman's union has filed photo copy of documents in support of its claim; whereas the management has filed none. The workman's union has examined the workman whereas the management filed evidence of Shri Arun Sharma, Dy. CPO in support of their respective claim. The workman got herself cross-examined; whereas the management witness did not turn up for cross-examination in spite of giving several opportunities; and the case was fixed for arguments. The parties forwarded oral arguments in support of their case.

7. Heard authorized representatives of the parties and perused entire evidence available on record.

8. The authorized representative has argued that the workman is entitled for family pension in terms of P.S. No. 8797 since the husband of the workman died on 12.06.1960 i.e. before 31.12.963. He also contended that the widow of Shiv Pal Singh also submitted application for the same on 18.09.1987 in prescribed proforma and thereafter on 13.11.1991; but she has not been granted family pension in terms of instructions contained in Railway Board's order vide P.S. No. 8797 & 9252 for which she is entitled.

9. Per contra, the management's representative has contended that the husband of the workman had opted for P.F. pension and accordingly his widow is entitled for ex-gratia pension only; and she is being paid accordingly. It is also contended that the case of the workman is not covered by the instructions contained in Railway Board's order vide P.S. No. 8797 & 9252 since same is for those railway servants were allowed family pension who retired or died prior to 01.01.1964 and were on pensionable establishment i.e. who had opted for pension only. Since the husband of Smt. Tarawati was P.F. optee, therefore, the widow of the workman, Smt. Tarawati was paid ex-gratia pension only and she is not entitled for family pension in terms of P.S. No. 8797.

10. I have given my thoughtful consideration to the rival contentions of the parties and perused the evidence available on record in light thereof.

11. The workman, Smt. Tarawati in her evidence has stated that her husband died during service on 12.06.1960 and after his death she was paid ex-gratia pension. It was also stated that she applied for family pension in the year 1991. In rebuttal, the management has filed affidavit of Shri Arun Sharma, Dy. C.P.O.; but he did not turn up for his cross-examination even ample opportunity was afforded to him; which led to closing his opportunity for cross-examination and thereby making his evidence ineffective.

12. Admittedly, the husband of the applicant, Tarawati died on 12.06.1960 who had opted for P.F. and accordingly, on his death, his widow was paid ex-gratia pension. The case of the parties rest on the instructions contained in Railway Board's order vide P.S. Nos. 8797 & 9252. In this regard the management has contended that the instructions contained in P.S. No. 8797 is for those railway servants were allowed family pension who retired or died prior to 01.01.1964 and were on pensionable establishment i.e. who had opted for pension only. As regard P.S. No. 9252 the management's stand is that it is for regulating the allocation of funds and has nothing to do with the case of the workman.

13. Keeping in view the pleadings of the parties, the relevant extracts of the instructions contained in Railway Board's order vide P.S. Nos. 8797 & 9252 is of worth material and the same is reproduced hereunder:

"P.S. No. 8797.

Sub- Grant of family pension to Families of Railway employees governed by the pension scheme who retired or died before 1-1-64 or are otherwise not covered by the Family Pension Scheme for Railway employee, 1964. Implementation of the Judgment of the Supreme Court.

…….

2. Initially, the family Pension Scheme for Railway employees 1964 was a contributory one and employees eligible for the benefits of the scheme were required to contribute two months emoluments out of the DCRG. However with effect from 22-9.1977, this pre-condition was done away with.

3. Sometimes back a section of widows of erstwhile Rly. Servants who were not covered by the Family Pension Scheme -1964, had filed writ petitions in the Supreme Court of India claiming that the benefit of the family pension scheme, 1964 may also be extended to them.

4. During the hearing of these petitions, the Government made a statement on 15-4-85 before the Court on their own stating as to what extent the Govt. would be prepared to accept the claim of the widows. Keeping in view the statement filed by the Govt. and clarifications subsequently given to the Hon'ble Court by the Govt. the Supreme Court of India delivered its judgment on 30th April, 1985 extending w.e.f. 22-9-77 the benefit of the family pension scheme 1964 to the families of those Railway servants who were/are borne on pensionable establishment and are not presently covered by that scheme namely the families of those Railway employees who retired/died before 31-12-1963 and those who were alive on 31-12-63 but who opted out of the family pension scheme – 1964.

5. Consequent upon the above judgment of the Supreme Court the President has been pleaded to decide that:-

(a) The benefit of family pension scheme, 1964 may be extended to all the eligible members of the family in accordance with the provisions of this Ministry's letter No. F(P)63-PNM/40 dated 2-1-1964.

(b) All the eligible persons, including dependents, shall be allowed the increased pension rates as introduced from……

(c) The arrears of family pension may be granted w.e.f. 22-9-77 the date on which contribution of two month's emoluments by pensioners was dispensed with or from a subsequent date they become eligible for family pension, whichever is enter. The benefit will also be available in cases where the death of the pensioner occurs hereafter.

(d) Persons who are now to be granted the benefit of family pension will not be required to contribute two months emoluments, similarly, no demand for refund of contribution already made by pensioners will be entertained by the Govt. and

(e) Life time arrears of family pension would also be payable in respect of widows/eligible members of the family of the deceased Rly. Employees who were alive on 22-9-1977 and who died subsequently to this date, for the period from 22-9-1977 to the date of death."

P.S. No. 9252.

"Yah vinishchay kiya gaya hai ki 1.1.84 se purv sewanivrit hue karmchariyon ke parivaaron ko ya jin karmchariyon ki miritu 1.1.6 se purv ho gait hi ya jo 1961 ke parivaar pension yojna ke antargat nahi aate unke parivaaron ke board ke 26.7.85 ke patra sa. F[E]11185/PN/19 ke madhyam se karyanvit sarvoch nayayala ke nirnay ke anusaran main parivaar pension ke bhugtyaan ka lekha samanay pension aur parivaar pension ke bhugaatn se bhinn rakha jai aur ise kisi nae lekha u-shirsh ke antargat darj kiya jana chahiy.

2. Tadanusaar, uparukt aadeson ke antargat sarvoch nayayala ke nirnay ke kaaran diye gaye parivaar penion ke bakaya raashi, rajasv saar L main laghu shirsh 400 parivaar penion ke antargat naye up-shirsh 420 main darj ki jaani chahiye"

From bare reading of the above two circulars/PS it is crystal clear that the P.S. 8797 pertains to the extension of benefits of the family pension scheme 1964 to the families of those Railway servants who were/are borne on pensionable establishment and are not presently covered by that scheme namely the families of those Railway employees who retired/died before 31-12-1963 and those who were alive on 31-12-63 but who opted out of the family pension scheme – 1964. The PS No. 9252 was regarding regulating the funds for payment of family pension to the beneficiaries of PS No. 8797.

14. It is admitted case of the parties that the husband of the applicant Tarawati viz. Shiv Pal Singh died on 12.06.1960 who had opted for P.F., consequently, on his death, his widow, Smt. Tarawati was paid ex-gratia pension instead of pension. Later on issuance of PS No. 8797, in pursuance to the Hon'ble Supreme Court's judgment in Smt. Poonamal & others vs UoI & others (1985) 3 SCC 345, those railway employees who retired/died before 31.12.1963 and opted out of family pension, were also granted benefits of family pension scheme -1964. Hence, the PS No. 8797 squarely covers the cause of the applicant

as her husband Shiv Pal Singh died before 31.12.1963 and had opted out of the family pension scheme, 1964; and accordingly, Tarawati becomes entitled for pension as per provisions contained in the PS No. 8797.

15. Therefore, in view of discussions made hereinabove, I am of the considered opinion that the denial of family pension to Smt. Tarawati w/o Late Shiv Pal Singh is illegal and unjustified; and accordingly, the workman's widow is entitled for family pension under Rules w.e.f. 13.06.1960. The applicant shall be entitled for arrears of family pension deducting ex-gratia pension within six weeks of the publication of this award, failing which she shall also be entitled for simple interest @ 6% per annum. The reference under adjudication is answered accordingly.

16. Award as above.

LUCKNOW.

26th March, 2014.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1663.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं. 6/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/207/2013-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1663.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 30/05/2014.

[No. L-12012/207/2013-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/6/2004

PRESIDING OFFICER : SHRI R. B. PATLE

Shri Rajendra Prasad,
S/o Laxman Prasad,
Dongarpura, Near Railway Line,
Shinde ke Chhawni, Lashkar,
Gwalior .....Workman

Versus

Divisional Manager,
UCO Bank, Zone-II,
M.P. Nagar,
Bhopal (MP) .....Management

AWARD

Passed on this 21st day of February 2014

1. As per letter dated 9-2-2004 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/207/2003-IR(B-II). The dispute under reference relates to:

> "Whether the action of the management of Divisional Manager, UCO Bank in terminating the services of Shri Rajendra Prasad S/o Laxman Prasad w.e.f. 7-5-97 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/5. Case of Ist party workman is that he was engaged as peon in New Market, Lashkar, Gwalior of UCO Bank on 1-9-86. He was paid wages Rs. 89/- per day, bonus was paid to him. Weekly holidays were also given to him. He was honestly working in the Bank. His services were terminated from 7-5-97. Ist party workman was continuously working for 11 years in IInd party No.3. during each of the year, he had completed more than 240 days continuous service. After termination of his service he is unemployed. While terminating his services, principles of last come first go was not followed. IInd party after terminating his services have engaged other persons as peon. They are still working in the Bank.

3. Workman further submits that no chargesheet was issued to him, enquiry is not conducted against him, he has not been paid retrenchment compensation, permission of Government is not obtained for his retrenchment. His services are terminated without issuing notice. He was not paid notice pay. Workman submits that termination of his service is illegal. Notice was issued through his Advocate on 4-6-97 to IInd party no. 3. The notice was received on 7-5-97 but the workman was not allowed to work in the Bank. He filed proceeding before ALC and dispute is referred. On such ground, workman is praying for his reinstatement with consequential benefits.

4. IInd party filed Written Statement at Page 6/1 to 6/4. IInd party raised preliminary objection that the statement of claim filed by workman shows that the workman was engaged on daily wage basis dehors the recruitment rules as subordinate staff. That the workman is not covered under Section 2(S) of I.D.Act. no case is made out of retrenchment under Section 2(oo) of I.D.Act. Relationship of employer employee never existed between parties.

Section 25-F of I.D.Act is not applicable. There is no cause of action for non-engagement of workman from 7-5-97. IInd party further submits that since Ist party workman was engaged on 1-5-86 and completed more than 240 days duties in subordinate cadre for 3 years, his name was forwarded to office, Calcutta in terms of settlement dated 12-10-89 with the Union. The name of Ist party workman was forwarded for empanelment and absorption against regular post on availability of vacancy but the Head office after consideration and screening of such casual daily wager like the claimant found him to be ineligible since he was underage of only 17 years on the date of his first engagement i.e. 1-5-86. IInd party denied all material averments of workman that the engagement of workman was sporadic to meet extra emergent work from time to time. There was no compulsion to attend duty as peon. IInd party further submits that after his dis-engagement from 7-5-97, there was no necessity to re-engage him for want of extra emergent work in the Bank. The non-engagement of workman cannot be said as dismissal from service amounting to retrenchment. That workman had not worked for 240 days at a stage in any 12 calendar months. The case of Ist party workman doesnot constitute industrial dispute. He was never appointed against vacant post of peon in Bank. Workman was engaged from time to time to meet the urgent nature of work. The claim of workman is not tenable. All other adverse contentions of workman are denied. IInd party prayed for rejection of the claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Divisional Manager, UCO Bank in terminating the services of Shri Rajendra Prasad S/o Laxman Prasad w.e.f. 7-5-97 is justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. Ist party workman is challenging termination of his service for violation of Section 25-F of I.D.Act. IInd party has raised objection that the workman was not appointed against vacant post. He was engaged sporadically for emergent work. The discontinuation of workman doesnot constituted retrenchment under Section 2(oo) of I.D.Act. The workman had not completed 240 days continuous service in any of the 12 calendar months. Workman filed affidavit of his evidence covering his contentions that he was appointed on 1-5-86 on vacant post of peon and continue to work on said post without break till his oral discontinuation from 7-5-97. That he was not given order in writing. He was not given opportunity of hearing to submit explanation for termination of his service. He had worked for more than 240 days every year. His services are terminated in violation of Section 25-F of I.D.Act. His juniors Harish and Ashok who were appointed in 1987-88 are retained in service in violation of Section 25(G) of I.D.Act. That termination of his service is illegal. Legal notice sent by him was not complied. In his cross-examination workman says he was appointed in 1986. His date of birth is 3-4-69. The post was not regularized. He did not receive appointment letter. He has no document about payment of Rs. 89/- per day or payment of bonus. That certificate was issued by Manager about completing more than 240 days, its copy is produced on record. There is no specific denial that workman had not completed 240 days continuous service in any of the calendar year rather the IInd party in his Written Statement- Para-2 has clearly admitted that since initial engagement of workman on 1-5-86 he had completed 240 days or more duties in subordinate cadre within period of 3 years. His name was forwarded to the Head Office for absorption.

7. The evidence of management's witness Shri Satish Kant Jain is on the point that there was no vacancy of peon, there was no notification of any vacancy in the Bank, Naya Bazar Branch, Lashkar Gwalior. Bank did not asked workman to submit written application with particulars of age, educational qualification etc. the name of workman was forwarded to Head Office in terms of settlement dated 10-10-89 with 3 Union for empanelment and subsequent absorption against regular post on available vacancies. Head Office found workman ineligible as he was underage not attaining minimum 18 years in date of Ist appointment. That the record being old, the bank is not in possession of original record regarding contingency expenditure vouchers. The witness states that workman never appointed as an employee nor he was continuously working for more than 240 days in a calendar year. Management's witness in his cross-examination says from July 87 to March 90, he was working in Gwalior branch from 1990 to 1997 he was working in Nayabazar branch. Workman Rajendra during 1987 to March 1990 he was working as casual labour. During that period he was working as Branch Manager, wages were paid by voucher. He admits that name of casual labour used to be mentioned in the voucher, signature of labour to whom wages were paid used to be obtained in voucher. Entry of mount paid under voucher was maintained in the cash book. The documents were not found from payment voucher and cash book it can be ascertain how many days workman worked in the Bank. Except voucher, no other record is maintained abut casual workers. That he has stated in his affidavit that workman has completed 240 days working in any calendar year. He has seen those records, vouchers, correspondence during 1987 to 1990 , 1990 to 1997. There is correspondence that workman had not worked for 240 days. The correspondence was seen by witness in

Regional office. However the witness was unable to tell who had written said letter. Those documents are not produced by IInd party. That some letter was written by workman in 1988 claiming that he had worked for more than 240 days. If evidence of workman and management's witness is carefully appreciated, in the evidence of management's witness, he admits that workman was working as casual labour during 1987 to March, 1990 while he was working as Branch Manager. Evidence of management's witness in para-8 doesnot whisper that the workman was not continuously working. He documents rendered by witness for affidavit are not produced on record. Any correspondence is not produced on record.

8. Though management's witness has stated that the name of Ist party workman was forwarded to Head Office Calcutta in terms of settlement dated 12-10-89, even that settlement is not produced on record. The evidence of management's witness is not disclosing as to what were the conditions for regularization/ absorption as per settlement dated 12-10-89. That Head Office had found that the workman was underage on the date of his initial engagement. The copy of proposal sent to the Head Office and decision taken by Head office are not produced by the management. Annexure R-I produced by IInd party shows that workman was engaged in the bank on 1-1-86. His date of birth was 3-4-69. If calculations are accepted, the age of Ist party workman on date of his initial appointment was 16 year 7 months and 10 days. The workman was continuously working from 1987 to 1990 as per evidence of management's witness. If the workman was underage at the time of his initial engagement, he continued to work with the management and attained majority after passage of time. The evidence is not adduced on record about his working days when his proposal was submitted to Head office for absorption/regularization, what were the minimum working days required as per settlement dated 12-10-89. All those documents are expected in custody of management of IInd party. Those documents are not produced nor evidence about what were the working days of other junior employee who were regularized. The documents are not produced .

9. The pleadings in Written statement and evidence of management's witness clearly shows that though name of workman was forwarded to Head office for absorption/ regularization subject to availability of vacancies in terms of settlement dated 12-10-89, the management tried to show different picture that the workman was casually employed and he is not covered under Section 2(s) of I.D.Act, denial of benefit of settlement dated 12-10-89 and what were the reasons for not regularizing the workman despite of the proposal sent to the Head office. The evidence is not adduced on above point. From evidence of management's witness, it appears that workman was considered eligible for absorption and proposal was forwarded to Head Office but the benefit of settlement dated 12-10-89 is denied to him for the reasons given that the workman was underage. The management has not produced as to what was the age of workman as per the documents available with it. On what date the workman attained majority, what were the minimum working days required for benefit of settlement dated 12-10-89. Withholding evidence on above points, the management had denied benefit of settlement dated 12-10-89 to the workman and discontinued his services.

10. Parties were given time for amicable settlement but settlement could not be arrived between parties. learned counsel for IInd party Mr. Bhattacharjee emphasized that the workman had not completed 240 days continuous service. Workman is not entitled to any relief.

11. Learned counsel relies on ratio held in-

> "Case of Himanshu Kumar Vidyarthi and others versus State of Bihar and others reported in 1997-Supreme Court Cases (L&S) 1079. Their Lordship dealing with disengagement on completion of work of casual labour held valid because daily wagers were not appointed according to rules to any post, they were appointed according to need of the work."

The ratio cannot be applied to present case as there is satisfactory evidence that workman was continuously working from 1987 to 1997 and proposal was forwarded to Head office for regularization of the workman. The facts of the case are not comparable. For the same reasons, ratio held in case of Karur Vysya Bank employees Union versus Presiding Officer, CGIT, Bangalore and another in 1988-LAB.I.C.1746 cannot be applied to the case at hand.

In case of Range Forest Officer versus S.T.Hadimani reported in 2002 Supreme Court Cases (L&S) 367, their Lordship held that completion of requisite length of continuous service- ownus lieis on the workman that he had worked for 240 days.

The ratio in above case supports the claim of workman as the evidence on record shows that workman was continuously working. The management's witness has admitted the workman was working with him from 1987 to 1990.

> "In case of Surendranagar District Panchayat versus Dahyabhai Amarsingh reported in 2006 Supreme Court Cases (L&S) 38, their Lordship of the Apex Court dealing with Section 25-F, 25-B, 2(oo) (s) and held facts that must be proved by workman to claim protection under Section 25-F are that their existed relationship of employer employee, (ii) he is a workman under Section 2(s), (iii) establishment in which he is employed is an industry within the meaning of the Act and (iv) he has put in not less than one year of continuous service as defined in Section 25-B of I.D. Act, these conditions are cumulative. If anyone is missing then Section 25-F will not be attracted."

In present case, there is no dispute that the IInd party Bank is an industry. Workman was engaged as casual labour is covered under Section 2(s) of I.D.Act. The ratio held in above cited case doesnot support the argument advanced by the learned counsel for IInd party. All the conditions are fulfilled in the present case. The evidence of management's witness is not clear for which specific work the workman was engaged and the said work was completed. Therefore Section 2(oo) (bb) cannot be attracted. The discontinuation of workman from work by the Bank squarely covered under Section 2(oo) of I.D.Act. Discontinuation of work amount to retrenchment. Workman was not served with notice, he was not paid retrenchment compensation, he is denied benefit of agreement dated 12-10-89 for absorption on the ground that he was underage. The documents are not produced. Therefore action of the management cannot be said legal. For above reasons, I record my finding in Point No.1 in Negative.

12. **Point No.2**- In view of my finding in Point No.1 , termination of service of workman is illegal, question arises whether the workman is entitled for reinstatement with back wages. Learned counsel for IInd party relies on ratio held in Case of Secretary State of Karnataka and others versus Umadevi and others reported in 2006 Supreme Court Cases (L&S) 753. The ratio held in above cited case cannot be applied to present case as the IInd party Bank had forwarded proposal for regularization of the workman to Head office. The head office did not approve the proposal that the workman was underage. Settlement dated 12-10-89 is not produced, minimum days required for absorption is not shown, how many days workman was working after he attained majority etc. is not produced. For with holding said evidence, the workman cannot be denied benefit of agreement dated 12-10-89 with the Union. The evidence of workman shows that he was unemployed after termination of his service is not challenged in his cross-examination. Despite of it, question remains how workman is surviving all those years without source of income is not seen form his evidence. For above reasons, reinstatement of workman with 50 % back wages would be justified instead of the alternate relief for compensation. Accordingly I record my finding in Point No.2.

13. In the result, award is passed as under :-

(1) The action of the management of Divisional Manager, UCO Bank in terminating the services of Shri Rajendra Prasad S/o Laxman Prasad w.e.f. 7-5-9 is illegal.

(2) IInd party is directed to reinstate workman with 50% back wages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1664.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं. 105/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-12012/146/1998-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1664.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 105/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of UCO Bank, and their workmen, received by the Central Government on 30/05/2014.

[No. L-12012/146/1998-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/105/99

PRESIDING OFFICER : SHRI R.B.PATLE

Shri Sunil Kumar Jakwalia,
S/o Ramachandra Jakwalia,
R/o Vill Jagothi, Tehsil Mahidpur,
Ujjain .....Workman

Versus

The Asstt. General Manager,
UCO Bank, Zonal Office,
E-5, Arera Colony,
Bhopal (MP) .....Management

AWARD

Passed on this 3rd day of March, 2014

1. As per letter dated 25-2-99/ 8-3-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/146/98/IR(B-II). The dispute under reference relates to:

> "Whether the action of the management of Managing Director, UCO Bank in terminating the services of Shri Sunil Kumar Jakwalia S/o Ramchandra Jakwalia w.e.f. 12-5-97 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Pages 3 to 9. Case of Ist party workman is that he was working with IInd party Bank during 1-3-89 to 5-5-89, 1-1-90 to 12-6-97 on vacant post of peon. His performance

was satisfactory. His services were illegally terminated. That IInd party for not giving him opportunity to work after termination of his service thereby violated section 25-H of I.D.Act. on such ground, workman prayed for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Pages 79 to 83. IInd party denied that workman was appointed against vacant post from 1-3-89. It is denied that his performance was satisfactory. IInd party also denied that workman was working continuously till 12-5-97 and his services are illegally retrenched. The contentions of workman that he was working from 1-1-90 to 12-5-97 is denied. It is submitted that workman was engaged purely on temporary basis , his employment was of casual nature. As per exigency, his engagement was de hors recruitment rules. Workman doesnot possess qualification for empanelment. Workman was not terminated in violation of I.D.Act. all material contentions of workman are denied as incorrect. It is denied that services of workman were terminated with mala fide intention of the management. It is denied that workman was disengaged in violation of Articles 14, 16 of the constitution. In additional submissions, IInd party submits that due to low profitability and manpower deployment in the Bank being optimal, the Govt. of India, Finance Department and Reserve Bank of India have imposed a complete ban on further recruitment of staff . The Bank was forced to take policy decision to curtail staff/post. Other panel casual workers waiting for their regularization could not be regularized. The persons enrolling their names in Employment Exchange are waiting in queue could not get employment. On such grounds, IInd party prays for rejection of claim.

4. Workman filed rejoinder at Pages 97 to 99 reiterating his contentions in Statement of Claim that he was continuously working with IInd party from 1-1-90 to 12-5-97.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Managing Director, UCO Bank in terminating the services of Shri Sunil Kumar Jakwalia S/o Ramchandra Jakwalia w.e.f. 12-5-97 is justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final orders.

REASONS

6. Workman is challenging termination of his service/ retrenchment for violation of provisions of I.D.Act. that he was working as peon in the Bank from 1-3-89 to 6-7-89, 1-1-90 to 12-5-97. In Para-3 of the Written Statement, above contentions are denied by the IInd party. Workman filed affidavit of evidence stating that he was working in Bank as peon during above said period. In his cross-examination there is no specific denial that workman was not working from 1-1-90 to 12-5-97. In his cross-examination workman says he had worked for 85 days from 1-3-89 to 7-6-89 and 252 days from 1-1-90 to 5-3-91. That the post was not advertised. He had not submitted written application. He was appointed orally all 3 times. His name was not sponsored to the workman that he had not completed 240 days continuous service during any of the years. Workman has stated in Paras 4 & 5 of his affidavit of evidence that he was continuously working for more than 240 days is not shattered in his cross-examination. Witness Ramesh Shinde supported evidence of workman, he was working in Bank during the year 1993 to 2001. Workman was also working during said period. He had completed 240 days working. In his cross-examination said witness says that he was acquainted with workman from 1993 as he was working as clerk in UCO Bank. Workman was working since prior to him in said branch. He claims ignorance whether appointment letter was issued to workman. There was no attendance register in the Bank. , service sheet was not maintained. Workman was working under Branch Manager. He has taken VRS in 2001. Witness was unable to tell for how many year the workman was working . he said that workman was working for 9-10 years as told to him by workman. Evidence of this witness that he was also working in the bank and as such was co-employee. He had seen workman working in the Bank while he was in employment. Therefore the evidence of witness No.2 cannot be rejected outright. Witness No.3 D.L.Singhai also corroborated evidence of workman that he was working in branch of Bank from 1-1-90 to 13-6-92. In his cross-examination he says that he was working in said branch from 1-1-90 to 13-6-92. Workman was in employment since prior to him, appointment letter was not given to workman. When information about workman was asked form him after verifying from record, he had furnished information. He claims ignorance whether workman was terminated issuing order in writing.

7. As against evidence of witness Nos. 1 to 3, management witness Sharma tried to support the contentions of IInd party that workman was engaged temporarily on casual basis as per exigencies. His employment was de hors the recruitment rules. His initial engagement from 1-3-89 , at that time he was of 16 years 5 months and not fulfilling the qualifications. IInd party has not produced document about date of birth of workman. Said point is raised only in evidence of the witness. Written Statement of IInd party is silent on the point. Management's witness in his cross-examination says he is working in Sarvana Maharaja branch from July, 2011. Record w.r.t. working of peon remains in office. He claims ignorance about permanent peon working in January, 1990.

He claims ignorance whether kalidas was transferred. Management's witness has no personal knowledge about working in the branch during 1990 to 1997. As the witness was unable to tell who were working during the said period, the evidence of workman and the corroborated witness Nos. 2, 3 having personal knowledge whether evidence of the management's witness is not based on personal information, he has deposed as per record. The documents are not produced by the management about working of the employee during 1989 to 1997 in the Bank.

8. Learned counsel for IInd party submits whether workman completed 240 days service or not , burden lies on workman. On said point learned counsel for IInd party Ashok Shrivastava relies in case of Director, Fisheries Terminal Department versus Bhikubhai Meghajibhai Chavda repoted in 2010(2) MPLJ-30. Their Lordship dealing with the point held burden of proof is on the employer to prove that he has not completed 240 days service in the requisite period to constitute continued service. The daily wage workman deposed that he had worked for more than 240 days during the period. In present case, workman and his witnesses have deposited that workman had completed 240 days service during each year during 1990 to 1997. Burden of proof shifted on employer to prove that workman had not completed 240 days service. Said burden is not discharged by IInd party as no documents are produced.

Learned counsel for IInd party Shri Bhattacharjee relies on ratio held in

> "Case of employer in relation to the management of G.C of BCCL versus workmen represented by Bihar colliery Kamgar Union reported in 2003 Supreme Court Cases (L&S) 30. Ratio held in case by their Lordship relates to regularization of employee, disability of being underage at the time of appointment held doesnot stand subsequently removed. Hence regularization based on such appointment cannot be upheld."The ratio cannot be applied to present case as no point about date of birth at the time of appointment of workman is raised in Written Statement, no certificate about date of birth of workman is produced. Ratio cannot be applied to case at hand.

In case of Union of India and others versus Bishamber Dutt reported in 1997 Supreme Court Cases (L&S) 478 ratio held by their Lordship that appointment on regular basis after selection according to rules, held a condition precedent. In present case, the terms of reference relates to legality of termination of service and not regularization of workman in service therefore ratio in the case cannot be applied beneficially.

In case of Pankaj Gupta and others versus State of Jammu and Kashmir reported in 2004(9) SRJ 103. Their Lordship held no person illegally appointed or appointed without following procedure prescribed under law should not be continued in service. The terms of reference is not for regularization of service of workman therefore ratio cannot be applied beneficially to the present case.

In case of Karur Vysya Bank Employees Union Bangalore versus Central Govt. Industrial Tribunal Bangalore in 1988 LAB.I.C.1746, his Lordship of Karnataka High Court held the services of persons utilized intermittently to do certain work which arose only on certain occasions- employment is of casual nature and not connected with work of Bank. Workman was working in the Bank from 19-8-89 to 12-5-97. The management has not adduced evidence what kind of work he was doing all those period therefore ratio cannot be applied to present case.

In case of Surendranagar District Panchayat versus Dahyabhai Amarsingh reported in 2006-Supreme Court Cases (L&S) 38, their Lordship held that necessary conditions to prove for invoking Section 25-F of I.D.Act that workman worked with the employer for 240 days etc.

The evidence discussed above is cogent that workman was continuously working with IInd party for more than 240 days. The evidence of management's witness is silent about issuing termination notice or payment of retrenchment compensation to the workman therefore it is clear that the termination of the services of workman is in violation of section 25-F of I.D.Act. Therefore I record my finding in Point No.1 in Negative.

9. **Point No. 2-** In view of my finding in Point No.1, question arises whether workman is entitled for reinstatement with back wages? Learned counsel for IInd party submits that workman was not appointed following recruitment rules. He was engaged on casual basis as per exigencies. Workman is not entitled for reinstatement. On the point, learned counsel for Ist party Mr. Srivastava relies on ratio held in

> "Case of Munshi Singh versus Nagar Panchayat, Joura reported in 2009(4) MPLJ-57. Full bench decision , their Lordship held normal rule is that once it is found that the termination order is violative of Section 25-F then the said order is ab-initio void and the employee is entitled to reinstatement with full back wages. However the Court can refuse to grant relief of reinstatement for which will depend on the facts and circumstances of each case. There is no hard and fast rule that the Court should grant the relief of reinstatement with full back wages in each and every case."

In case of Executive Engineer K.P.C.Vidar and another versus Zulfegar Ali reported in 2012-LAB-I.C.1987. His Lordship of Karnataka High Court bench cited bunch of laws, writ Petitions, in Para-24 of the judgment, his Lordship held when retrenchment is made in violation of Section 25 whether the reinstatement is a rule or the

payment of compensation is a rule perhaps has become a vexed question. The earliest decisions of the Supreme Court lays down that non-compliance of section 25(F) makes the retrenchment void and nullity. Therefore normally reinstatement should be the relief to be granted. However the Supreme Court in incharge Officer and another versus Shanker Shetty refers to catena of decisions of the Supreme Court on the point and has laid down the law that case of non-compliance of Section 25-F normally should result in only payment of compensation. It is also further held by Supreme Court in Telecom Officer's case that the compensation to be payable to a workman should be in accordance with provisions of Section 25(F) and grant of any higher compensation than what is prescribed under Section 25(F) would be bad in law. While concluding in Para 25 of the judgment, their Lordship held in the context of peculiair facts which are similar to the facts stated in the Devendra singh's case, it is just and necessary that the order of reinstatement granted by the Labour court is sound and proper. In cases where compensation is granted in view of reinstatement, the same is to be set aside and reinstatement to be ordered with continuity of service. It is however made clear that the workman should be reinstated only as daily wagers without back wages till the date of award and should be paid full wages from the date of publication of the award till reinstatement."

In present case, facts are little different. The workman was not engaged following recruitment process, his name was not sponsored through Employment Exchange. His engagement is dehors recruitment rules therefore reinstatement of workman would not be proper. In my considered view, reasonable compensation would be appropriate. Considering the length of service rendered by workman,. Compensation Rs. 1,50,000/- would be reasonable. Accordingly I record my finding on Point No.2.

10. In the result, award is passed as under:-

(1) Action of the management of Managing Director, UCO Bank in terminating the services of Shri Sunil Kumar Jakwalia S/o Ramchandra Jakwalia w.e.f. 12-5-97 is not legal and proper.

(2) IInd party is directed to pay compensation Rs. 1,50,000/- to the workman within 30 days from the date of order.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1665.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्रा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (17/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-12011/10/2009-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1665.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 30/05/2014.

[No. L-12011/10/2009-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/17/2009 Date: 17.02.2014.

Party No. 1 : The Chairman & Managing Director
Bank of Maharashtra,
Central Office, Lokmangal,
Shivaji Nagar, Pune(MS).

Versus

Party No. 2 : The General Secretary,
Union of Maharashtra Bank Employees,
542, Congress Nagar, Nagpur (MS)

AWARD

(Dated: 17th February, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of Maharashtra and the son of their workman, late Bhagirathibai Bawanthade, for adjudication, as per letter No.L-12011/10/2009-IR (B-II) dated 27.04.2009, with the following schedule:-

> "Whether the action of the management of Bank of Maharashtra for not considering the application of Shri Pankaj Somaji Baanthade, S/O Late Bhagirathibai Bawanthade, part time sub ordinate employee for providing employment on compassionate grounds is justified, legal and proper? What relief the concerned applicant is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written

statement and accordingly, the union, "Union of Maharashtra Bank Employees ("the union" in short) filed the statement of claim on behalf of Shri Pankaj Somaji Bawanthade (" the applicant" in short) and the management of Bank of Maharashtra ("Party No. 1" in short) filed their written statement.

The case of the applicant as presented by the union in the statement of claim is that the party No.1 is a Nationalised Bank and is a State within the meaning of Article 12 of the Constitution of India and is an industry and it (union) is a registered trade union and the applicant is the son of late Bhagirathi Bai Bawanthade, a permanent part-time sub ordinate staff working at Gondia branch of party No.1 and mother of the applicant, Smt. Bawanthade died in harness on 05.12.2000, after prolonged illness and till the date of her death, she had already put in 28 years of service with the Bank and late Bhagirathi Bai was a widow and she had no issue of her own, so, after the death of her husband, she adopted the applicant as her son on 21.08.1993, as per the adoption deed and the applicant is the adopted son of the deceased workman and the name of the applicant was entered as the nominee of late Bhagirathi Bai in the Bank's record, for pension, provident fund and gratuity etc. and after the death of Bhagirathi Bai on 05.12.2000, the head office of the Bank took more than four years to settle the claim of death benefits and in the year 2004 only, Bank finally effected payment on the above counts to the applicant and subsequently, family pension was also released in favour of the applicant and the applicant is the only dependant member of the family of the deceased employee, as per the definition of "family" used by the Bank for all purposes.

The further case of the applicant as presented by the union is that party No.1 formulated a scheme for appointment of dependants of the employees, who die in harness and the said scheme was circulated by the party No.1 vide circular dated 27.02.1997 and the said scheme was in force till 31.07.2004 and after 31.07.2004, the party No.1 made certain changes in the scheme and on the date of death of the mother of the applicant, the scheme for appointment on compassionate ground was very much in force and was applicable to the case of the applicant and the applicant on 02.06.2001 and subsequently on 01.08.2001 applied to the party No.1 for consideration of his application for the post of clerk, having the required qualification and other norms for the said post and the applicant submitted his applications at Gondia branch of the Bank, where his mother was working and on 01.11.2003, the applicant again made an application in the specific proforma and his application was duly forwarded by the Branch Manager, Gondia to Regional Head of the Bank for doing the needful, but party No.1 surprisingly vide its communication dated 16.05.2006 intimated the applicant that his claim for appointment in the Bank was rejected and such rejection was on incorrect and flimsy grounds that the application was received by the Bank after completion of one year of the death of the concerned employee and the reasoning given in the said letter was factually incorrect and not germane and as the Scheme in question is for giving social justice, the claim of the applicant ought not have been rejected for the reason stated for it and rejection of the claim of the applicant was due to hostile discrimination adopted by the party No.1 and was in total violation of the policy framed by the party No.1 itself.

The Union has prayed for a direction to party No.1 to consider the application of the applicant and to give him appointment as a clerk on compassionate ground.

3. The party No.1 in the written statement has admitted almost all the pleadings made in the statement of claim. The specific pleading of the party No.1 is that according to the scheme, the application for compassionate appointment was required to be submitted by the applicant within the stipulated period of 12 months from the date of death of the deceased employee, but the applicant for the first time submitted the application on 01.11.2003 for consideration, which was almost after 3 years from the date of death of his mother, Bhagirathi Bai and in view of the inordinate delay in submission of the application, it conveyed its inability to provide employment on compassionate ground to the applicant, vide its letter dated 16.05.2006 and it is well settled by the Hon'ble Apex Court that appointment on compassionate ground cannot be claimed as a matter of right and as the applicant did not follow the prescribed norms, his application was rejected and the applicant is not entitled to any relief.

4. Besides placing reliance on documentary evidence, both the parties have led evidence in support of their respective claim.

The union has examined two witnesses including the applicant to prove the case.

In his examination- in –chief, which is on affidavit, the applicant has reiterated the facts as mentioned in the statement of claim. However, the workman in his cross examination, the applicant has stated that his mother died on 05.12.2000 and at that time, his age was 18 years and he cannot say the date on which, he filed the application for compassionate appointment and Ext. W-V is the copy of the application filed by him on 23.12.2004 and in Ext. W-V, he had mentioned that he had filed the application for compassionate appointment on 01.11.2003 and in Ext. W-V, he had not mentioned anything about filing of any application for compassionate appointment prior to 01.11.2003.

5. The other witness for the union is Shri Ramprasad Gupta, the deputy General Secretary of the union. This witness has also reiterated the facts mentioned in the statement of claim, in his examination- in-chief on affidavit.

In his cross examination, this witness has stated that as per the scheme for compassionate appointment, Ext. W-I, it is necessary for the applicant to file the application for compassionate appointment within one year from the date of death of the employee and in Ext. W-I, special provision has been given for compassionate appointment. This witness has also admitted that Ext W-V is the application submitted by the applicant on 23.12.2004 for compassionate appointment and in Ext. W-V, the workman has mentioned that his mother died on 05.12.2000. This witness has denied the suggestion given in the cross-examination that the Bank had sent the prescribed form for compassionate appointment to the applicant vide letter No. 511 dated 03.07.2001.

6. The party No.1 has examined one Mahindra Kumar Kabra, the Chief Manager of the Bank as the only witness. The examination-in-chief of this witness on affidavit is in the same line of the stand taken by the party No.1 in the written statement.

In his cross-examination, the witness for the party no.1 has stated that in paragraph 6 of Ext. M-I, it has been mentioned by the Bank that "Regional Office, Nagpur supplied the Bank set of application from in prescribed format vide its letter no. AX7/NR/2001/ST/511 dated 03.07.2001 and advised the Branch Manager, Gondia branch to get the same filled in by the applicant and resubmit the same in the prescribed format" and he cannot say if the instructions given vide letter No.511 dated 03.07.2001 as mentioned above was complied with by Gondia Branch or not and no document has been filed by the management to show as to what step was taken by the Gondia Branch on that letter.

7. At the time of argument, it was submitted by the learned advocate for the applicant that though there is no dispute that employment on compassionate ground cannot be claimed as a matter of right, still then, the party no.1 formulated the scheme for appointment of dependents of the employees, who die in harness and the scheme is for giving social justice and the applicant comes from very poor and socially backward family and he is eligible and entitled for such employment and it is clear from the materials on record that the applicant submitted the application for compassionate appointment within the stipulated time and as such, rejection of his application without consideration on the ground that the application was submitted after the prescribed time is patently wrong, illegal unjustified, improper and without any basis and as such, the applicant is entitled for consideration of his application for compassionate appointment and for his appointment as a clerk on compassionate ground.

8. Per contra, it was submitted by the learned advocate for the party no.1 that party no.1 formulated the scheme for providing compassionate appointment to dependents of the employees, who die in harness and amongst various conditions, one condition for such appointment is that, "the application should be received by the bank within one year from the date of death of an employee" and in this case, the applicant did not submit the application within the stipulated period of 12 months from the date of death of the employee, deceased Bhargirathi Bai, his adoptee mother, who died on 05.12.2000 and the applicant was supplied with a set of blank application form in the prescribed format by the Bank vide letter dated 03.07.2001 and he was advised to resubmit the same after duly filled in and the applicant failed to submit the said application form in prescribed format till 01.11.2003 and after a lapse of about three years, on 01.11.2003, the applicant submitted the application in the prescribed format, seeking compassionate appointment and the applicant himself has admitted the said fact vide his letter dated 23.12.2004 and the contention of the applicant that he had submitted his application for appointment on 02.06.2001 and 01.08.2001 is misconceived and as the application for compassionate appointment in the prescribed format was filed by the applicant after the prescribed limit, his application was not considered by party no.1 rightly and there is no illegality in the action of party no.1 and the applicant is not entitled to any relief.

It was also submitted by the learned advocate for the party no.1 that the Hon'ble Apex Court and various Hon'ble High Courts in number of decisions have held that compassionate appointment cannot be claimed as a matter of right.

In support of such contention, the learned advocate for the party no.1 placed reliance on the decisions reported in 2011 (1) LLN 540 (M. Pathak Vs. State of UP), 2009 (3) LLN-715 (M.Khan Vs. Eastern Coal Fields Ltd.), 2009 (1) LLN-611 (S.Kumar Vs. U.O.I), 2009 (3) LLN-235 (M.Raju Vs. U.O.I), 2009 (3) LLN – 81 (SC) (S.K. Dube Vs. State of UP) and 2007 (115) FLR-307 (Virendra Singh Vs. M.C. Delhi).

9. At the outset, it is to be mentioned that it is well settled by the Hon'ble Apex Court in a string of decisions that "Appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme."

However, it is necessary to mention here that in the case at hand, the issue for consideration is as to whether the non-consideration of the application submitted by the applicant for compassionate appointment on the ground of submission of the same beyond the period prescribed for the same. It is not a case of rejection of the application of the applicant after consideration of the same on merit and denial of compassionate appointment. Hence, the issue involved is to be considered and decided on the materials on record.

10. After perusal of the pleadings of the parties and the evidence on record and taking into consideration the submission made, it is found that almost all the facts are admitted in this case by the parties. The only dispute is regarding the date on which the application for compassionate appointment was filed by the applicant. According to the applicant, he submitted the application in time and he submitted his first application on 02.06.2001 and he also submitted further applications on 01.11.2003. On the other hand, it is the case of party no.1 that the applicant filed the application for compassionate appointment on 01.11.2003, which was about three years after the death of the concerned employee, though as per the scheme such application was required to be filed within one year to the death of the employee, so, the said application was not considered by it.

It is to be mentioned here that the six documents filed by the applicant were admitted into evidence on behalf of the applicant without formal proof and marked as Ext. W-I to W-VI, on admission of the documents by party no.1. Likewise, the five documents filed by party no.1 were admitted into evidence on behalf of the party no.1 without formal proof and marked as Exts. M-1 to M-V, on admission of the documents by the applicant.

11. Ext. W-I shows that it is the copy of the scheme made by the party no.1 for appointment on compassionate grounds. According to the said scheme, the application for compassionate appointment has to be made within one year of the death of the concerned employee. However, it is to be mentioned here that in the entire scheme, nothing has been mentioned that the application for compassionate appointment has to be made in the prescribe format. The format of application was also not prescribed alongwith the scheme. No document has also been filed by party no.1 to show that by any circular or order of the competent authority, it was directed to submit the application in the prescribed format only.

11. Ext. W-II is the copy of the application submitted by the applicant for compassionate appointment on 02.06.2001 alongwith the required documents. As already stated, the document, Ext. W-II has been admitted into evidence on the admission of party no.1. Ext. W-II clearly shows that the same was filed by the applicant within one year of the death of his mother, Bhagairathi bai.

Ext. W-IV shows that the same is the copy of the letter addressed by the Chief Manager of the Bank to the Branch Manager, Gondia Branch on 03.07.2001. In Ext. W-IV, it has been mentioned that, "REG: Request for employment on compassionate ground. PTS: Late Bhagirathi S. Bawantade.

This refers to the captioned papers submitted by you in respect of Pankaj S. Bawanthade seeking employment on compassionate grounds in place of his late mother Bhagirathi bai S. Bawanthade, PTS.

We find from the same that the application is not submitted in the prescribed format. We are enclosing herewith the blank set of such forms. The applications be re-submitted in the prescribed format. The papers are therefore returned herewith."

The said documents clearly show that the applicant had submitted the application for employment on compassionate ground within the prescribed time limit. However, the Chief Manager wanted the application in a particular format and asked the Branch manager of Gondia branch to fill up the same and to re-submit the same. There is nothing on record to show that the prescribed set of form was sent to the applicant vide letter dated 03.07.2001 as claimed by party no.1. There is also nothing on record to show as to when action was taken by the Branch Manager, Gondia branch on the letter dated 03.07.2001.

It is clear from the evidence on record that the applicant had submitted the application for compassionate appointment within the prescribed time limit as given in the scheme for employment on compassionate ground. So, the action of party no.1 in not considering the application of the applicant was unjust and improper. Hence, it is ordered:-

ORDER

The action of the management of Bank of Maharashtra for not considering the application of Shri Pankaj Somaji Baanthade, S/O Late Bhagirathibai Bawanthade, part time sub ordinate employee for providing employment on compassionate grounds is unjustified, illegal and improper. The party No.1 is directed to consider the application submitted by the applicant, Shri Pankaj Somaji Bawanthade for employment on compassionate grounds in accordance with the provisions of the relevant Scheme on merit.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1666.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बरोदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (5/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 प्राप्त हुआ था।

[सं. एल-12012/21/1999-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th May, 2014

S.O. 1666.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 30/05/2014.

[No. L-12012/21/99-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/5/2000

PRESIDING OFFICER : SHRI R.B.PATLE

General Secretary,
Dainik Vetan Bhogi Bank Karmchari Sangathan,
Hardev Niwas, 9,
Sanver Road, Ujjain .....Workman/Union

Versus

Managing Director,
Bank of Baroda,
Head Office, Mandwi
Gujrat, Baroda .....Management

AWARD

Passed on this 12th day of February 2014

1. As per letter dated 23-12-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/21//99/IR(B-II). The dispute under reference relates to:

> " Whether the action of the management of Bank of Baroda in denying regularization and terminating the services of Shri Bhagirath Verma w.e.f. 7-12-97 is legal and justified? If not, what relief the concerned workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of claim at Page 3/1 to 3/4. Case of Ist party workman is that he was working as peon with IInd party Bank from 30-4-91. He was doing work of cleaning, dusting. His service record was excellent. He was working under different Branch Managers. He was paid wages obtaining signature on vouchers. Though he was working in the branch, his signatures were obtained in different names on vouchers,. That he completed 240 days continuous service. His services were terminated without notice from 7-12-97. He was paid retrenchment compensation. Other persons were engaged. He was not given opportunity to work. His services are terminated in violation of Section 25-F of I.D.Act. Workman prays for his reinstatement with back wages.

3. IInd party filed Written Statement at Page 12/1 to 12/10. Preliminary objection is raised that General Secretary of Dainik Vetan Bhogi Bank Karamchari Sangathan is not competent to represent workman. Said Union is not existing. The employees of the IInd party Bank are not its members. The Managing Director has not terminated services of the Ist party workman. He is not necessary party to the dispute. That Ist party workman was not appointed by the Bank. There was no question of his termination. That Ist party workman is not covered under Section 2(s) of I.D.Act. He was not appointed following the recruitment rules. Workman casually engaged is not covered under Section 25(B) of I.D.Act. that workman was not engaged through Employment Exchange. He had completed 240 days continuous service. His services were temporarily engaged as per exigencies. He is not entitled for reinstatement. IInd party denies violation of Section 25-F of I.D.Act. It is prayed that claim of Ist party workman be rejected.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Bank of Baroda in denying regularization and terminating the services of Shri Bhagirath Verma w.e.f. 7-12-97 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed.

REASONS

5. Though termination of Ist party workman is challenged for violation of Section 25-F, G, H of I.D.Act, workman claims that he was working as peon from 30-4-91 to 7-12-97. He completed 240 days continuous service every year. His services were terminated without issuing notice, no retrenchment compensation was paid to him. Workman filed affidavit of his evidence covering most of above contentions. However the workman failed to make available for his cross-examination. The evidence of workman is closed on 19-4-2001. Workman has not made available for his cross-examination. His evidence cannot be accepted. Management has also not adduced evidence,. Thus both parties have not participated in reference proceeding effectively. Workman has failed to substantiate his contentions that he was continuously working during the relevant period. Violation of Section 25-F of I.D.Act is not

supported by legal evidence. Therefore I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

(1) Action of the management of Bank of Baroda in denying regularization and terminating the services of Shri Bhagirath Verma w.e.f. 7-12-97 is legal.

(2) Workman is not entitled to relief prayed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1667.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 40/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-22012/361/1999-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1667.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 30/05/2014.

[No. L-22012/361/1999-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/40/2000

PRESIDING OFFICER : SHRI R.B.PATLE

Sheo Prasad Kewat,
Ex-General Mazdoor,
Vill Bakoh, PO O.P.M,
Amlai, Distt. Shahdol .....Workman

Versus

Sub Area Manager,
Dhanpuri U.G.Mine of SECL,
PO Dhanpuri,
Distt. Shahdol (MP) .....Management

AWARD

Passed on this 15th day of May 2014

1. As per letter dated 31-1-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/361/99/IR(CM-II). The dispute under reference relates to:

"Whether the action of the Sub Area Manager, Dhanpuri U.G.Mine of SECL, PO Dhanpuri Distt. Shahdol (MP) in terminating/dismissing the services of Shri Sheo Prasad Kewat S/o Shri Ramcharan Kewat, Ex-General Mazdoor of Dhanuri U.G.Mines w.e.f. 16-4-92 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman failed to submit statement of claim. He is proceeded exparte on 6-8-2010.

3. IInd party filed Written Statement. It is submitted by IInd party that workman Sheo Prasad Kewat was appointed as General Mazdoor on 27-11-84. He was posted at Dhanpuri Underground mine. He was absent from duty from 21-10-91 to 24-11-92 without permission. The attendance of workman was 115 days in 1989, 111 days in 1990, 75 days in 1991. Chargesheet was isused to workman on 25-2-92. Reply given by workman was found unsatisfactory. Shri S.P.Jaiswal was appointed as Enquiry Officer. Mr. B.K.Bartharey, Sr. Under Manager was appointed as Management Representative. Enquiry was fixed on various dates. Workman remained absent. Enquiry was proceeded exparte. Management produced witness of Shri Awadh Prasad Sharma, Attendance clerk, Dhanpuri mine. His evidence was on the point that workman did not attend duties from 21-10-91 till 13-3-92. Form B register was produced for the period 1989 to 1992. Workman had tendered apology in earlier chargesheet issued to him. that workman was habitual absentee. The charges were proved. Enquiry Officer submitted his report. The Disciplinary Authority agreed with findings of Enquiry Officer. Showcause notice was issued to the workman. Punishment of dismissal was imposed on workman on 18-4-92. Punishment is legal.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the Sub Area Manager, Dhanpuri U.G. Mine of SECL, PO Dhanpuri Distt. Shahdol (MP) in terminating/dismissing the services of Shri Sheo Prasad Kewat S/o Shri Ramcharan Kewat, Ex-General Mazdoor of Dhanpuri U.G.Mines w.e.f. 16-4-92 is legal and justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to relief as prayed.

REASONS

5. The terms of reference relates to legality of dismissal of workman for charges of habitual absenteeism. Workman

failed to file Statement of Claim. IInd party has pleaded that chargesheet was issued to workman and after findings of Enquiry Officer, punishment of dismissal was imposed on workman for habitual absence. Management filed affidavit of Shri S.K.Banerjee, Dy.General Manager, Sohagpur Area supporting contentions raised in the Written Statement filed by management. His evidence remained unchallenged. The copies of the chargesheet and record of enquiry are produced. I donot find reason to disbelieve evidence of management's witnesses. As workman has failed to file statement of claim or lead any evidence, I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

(1) The action of the Sub Area Manager, Dhanpuri U.G.Mine of SECL, PO Dhanpuri Distt. Shahdol (MP) in terminating/dismissing the services of Shri Sheo Prasad Kewat S/o Shri Ramcharan Kewat, Ex-General Mazdoor of Dhanuri U.G.Mines w.e.f. 16-4-92 is proper.

(2) Workman is not entitled to any relief as prayed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1668.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफ.सी.आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 30/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-22012/436/एफ/1993-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1668.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/94) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of FCI and their workmen, received by the Central Government on 30/05/2014.

[No. L-22012/436/F/1993-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/30/94

PRESIDING OFFICER : SHRI R.B. PATLE

Secretary,
FCI Employees Association,
Branch Bilaspur (MP) .....Workman/Union

Versus

Sr. Regional Manager,
Food Corporation of India,
Chetak Building,
Habibganj, Bhopal .....Management

AWARD

Passed on this 22nd day of April, 2014

1. As per letter dated 25-3-94 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/436/F/93-IR(C-II). The dispute under reference relates to:

> "Whether the action of the management of Food Corporation of India, Bhopal, in not giving promotion to Shri M.K.Tandon, Asstt. Gr. II (Ministerial) to Asstt. Gr.I w.e.f. 18-12-88 when his juniors S/Shri S.M.Gaekwad, B.C.Kureshia, S.K.Kaushal and S.N.Khare were promoted is justified? If not, to what relief Shri M.K.Tandon is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party Employees Association submitted statement of claim at page 2/1 to 2/20. Case of Union is that Shri Madhup Kumar Tandon was initially appointed as an Assistant in establishment of Food Corporation of India on 16-7-69 as Grde III (Ministerial) that in 1972, certain officials were substantively appointed as godown cadre as clerk had applied for their re-designation and re-appointment against vacant post of Asstt. Grade III. It was within the authority of the corporation to accept such options for transfer from one cadre to another cadre, the options given by the employees Shri S.M.Gaekwad, S.C.Kureshia, S.K.Kaushal. S.N.Khare was accepted. It is submitted that those officials were working in godown cadre were re-designated/ reappointed for all practical purposes in the ministerial cadre against post of A.G.III (Ministerial). That those employees were re-designated in ministerial cadre subject to terms and conditions mentioned in the order. It is clear from conditions in the order that they will have no lien on their post of godown clerk, they will be ranked below Asstt. Gr.III in the ministerial cadre, the option exercised by them for re-designation as Asstt. Grade III/Typist in the ministerial cadre are final and they will not be allowed to withdrawn their options. As such those employees were not entitled to claim seniority.That sub Regulation 7 of Regulation 16 of FCI provide the principle for reckoning relevant seniority of an employee transferred from one unit to another, stipulates and contemplates in clear and unambiguous terms that an employee transferred form one unit of seniority to another

will be ranked as junior most in the particular category on the date he joins the new unit.FCI was fully award of above provision. Only because of this reason, the terms and conditions were imposed in the order. The applicant further submits that the transfer of official from godown cadre to ministerial cadre was not at all considered in terms of Regulation 16(7). That the applicant employee was senior to those employees. He was promoted to next higher grade in 1976. Above said employees being junior to the applicant were promoted to Grade-II in 1979. It is reiterated that above said employees were transferred from godown to ministerial cadre where they were junior most. The Seniority list circulated on 6-5-87 shows inter seniority of A.G.II . The applicant was placed at Sl. No. 223. At instance of Union dispute was referred by Central Govt. R/4/83 was decided in this Tribunal though question of Regulation 16.7 was raised or considered, the award was passed in favour of the Union. Seniority form date of appointment of those employee was allowed. It is further submitted that the seniority list was published on 27-5-88. Name of applicant was at Sl. No. 225-B. the names of those above said employees were at Sl. No. 303-A to 303-E respectively. That above said employees were promoted as Asstt. Grade II in December 1988. Employee was not promoted though he was senior to above said employees, he was superseded outlooking his seniority. The applicant had submitted various representations. His representations were not sent to Zonal Manager but Senior Regional Manager himself decided the petition by sending a reply not accepting claim of the applicant. Union on such grounds, prays that award be passed in favour of the Union and application be considered for giving promotion from the date of promotion of above said employees junior to him with consequential benefits.

3. IInd party filed Written Statement at Page 6/1 to 6/5. Claim of Union is opposed. The contents of Para 1 to 4 of statement of claim are not disputed. IInd party denies that at the time of exercising option to change of cadre at the time were followed and any irregularities were not committed in making appointment. All the 4 officials were initially appointed at AG.III(D) and then transferred to Ministerial cadre is not correct. That Shri A.M.Gaikwad was appointed on 21-11-68, B.C.Kudesia on 23-11-68, Shri S.N.Khare on 17-12-68 and shri S.K.Kaushal on 28-1-69 without assigning any specific cadre. Their services were subsequently regularized as per order dated 29-4-70. Subsequently they were transferred to Ministerial cadre w.e.f. 25-1-1972 after exercising transfer to that cadre. They were shown junior to Shri M.K.Tandon in the seniority list. Their services were taken from date of transfer in the Ministerial cadre on the basis of regularization on post of A.G.III(D). That Shri Tandon was shown senior taking into his initial date of appointment 1-7-69. That this Tribunal had passed award on 6-1-86 in R/4/83. His seniority and other benefits in respect of 491 employees were decided in favour of the Association. Said award mentions that parties are employee in relation to management of FCI and list of 515 employees includes name of applicant at Sl. No. 203. The award finally concluded that the management of FCI giving seniority to the workman mentioned in the annexures from actual date of appointment and not from the date shown against their name. It is submitted that the award was challenged by FCI in High Court, W.P.No. 1445/86, the award was confirmed. FCI also challenged judgment in W.P by Hon'ble High Court. Award was confirmed by the Hon'ble Supreme Court. It is reiterated that seniority was given to above said employee by issuing corrigendum. Those employees are senior to the applicant therefore applicant is not senior. He is not illegally superseded. On such contentions, IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Food Corporation of India, Bhopal, in not giving ipromotin to Shri M.K.Tandon, Asstt. Gr.II (Ministerial) to Asstt. Gr.I w.e.f. 18-12-88 when his juniors S/Shri S.M.Gaekwad, B.C.Kureshia, S.K.Kaushal and S.N.Khare were promoted is justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Relief prayed by Union is rejected.

REASONS

5. Both parties have not adduced oral evidence. Documents are produced. It appears that the parties are not in dispute about the documents produced on record. Union has produced documents. Copy of award in R/4/83 Annexure P-4 holds the field. The award is passed in favour of the Association. Para-20 of the award is Presiding Observed for the reasons discussed above, I hold that the action of the management of FCI of India, MP, Bhopal in giving seniority to the workers whose names are mentioned in the Annexure from the duties shown against them and not from the actual of appointment is not justified. Therefore they are entitled to the seniority form the actual date of their initial appointments. The reference is accordingly answered. In view of above award, the employees were given seniority from the date of initial appointment and not from the date shown against their names. The award is binding on all employees. The contentions of IInd party that award has been confirmed by the Hon'ble High Court and Supreme Court is not disputed by filing rejoinder by Ist party union. When award

passed in R/4/83 has received finality, it is binding on the management. Above said employee who were given promotions of Asstt. Grade-I in the year 1988 on the basis of initial appointment cannot be said illegal. For above reasons, I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

(1) The action of the management of Food Corporation of India, Bhopal, in not giving ipromotin to Shri M.K.Tandon, Asstt. Gr.II (Ministerial) to Asstt. Gr.I w.e.f. 18-12-88 when his juniors S/Shri S.M.Gaekwad, B.C.Kureshia, S.K.Kaushal and S.N.Khare were promoted is proper.

(2) Ist party Union is not entitled to relief prayed by it.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1669.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 264/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-22012/495/1998-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1669.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 264/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 30/05/2014.

[No. L-22012/495/1998-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/264/99

PRESIDING OFFICER : SHRI R.B.PATLE

Shri Bhondol, S/o Shri Chaitu,
1/10, Chatterjee Side,
PO Godripara,
Distt. Surguja (MP) .....Workman

Versus

Sub Area Manager,
Kurasia Group of SECL,
PO Kurasia Collieiry,
Distt. Surguja .....Management

AWARD

Passed on this 15th day of May, 2014

1. As per letter dated 26-28/7/99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/495/98/IR(CM-II). The dispute under reference relates to:

> "Whether the action of the Sub Area Manager, Kursia of SECL, Chirimiri Area, Distt. Surguja (MP) in dismissing Shri Bhondol S/o Chaitu, workman Kurasia colliery w.e.f. 13-8-92 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/2. Case of workman is that chargesheet was issued to him by IInd party. That any proceeding before ALC, Shahdol management had submitted reply. The order of dismissal from service was issued instead of continuing workman in service. That the workman had submitted medical certificate about his illness dated 13-10-92, 29-8-92. Management considered those documents were forged and not accepted. The order of dismissal was not accepted on 20-3-92. It is submitted that workman was not given any intimation, no opportunity of hearing was given to him. The record about intimations given to workman could be verified by the Tribunal. That workman is not allowed to join duties. On such ground, workman is praying for appropriate directions to the management.

3. IInd party filed Written Statement at Page 7/1 to 7/5. Relief prayed by workman is opposed. IInd party submits that reference is extremely belated. Service of workman was terminated from 13-8-92. Dispute is raised in 1998. Such belated reference is not tenable. IInd party further submits that workman was regular absentee. He remained absent from duty without intimation or sanctioned leave. He was employed as General Mazdoor. The details of his working days are shown in 1988- nil, 1989-164 days, 1990-110 days, 1991 & 1992- nil. Charge sheet was issued to workman on 21-3-92 as per clause 26.30 of standing order pertaining to misconduct. No reply was received from workman. Management decided to conduct Departmental Enquiry. Shri G.P.Tiwari was appointed as Enquiry officer. Shri Raghav Singh was appointed as Management Representative. Enquiry was fixed on 1-4-92. Memorandum was issued to workman. Workman remained absent. Further memorandum was issued to him. Enquiry was fixed on 7-4-92 & 22-4-92. Again enquiry was fixed on 26-5-92. On same date workman submitted application admitting the charges leveled against him and he may be permitted to resume his duties. Workman had given statement before Enquiry officer admitting the charges. As such charges against workman are proved. After report submitted by Enquiry Officer, competent authority was satisfied that enquiry was conducted as per rules following principles

of natural justice. Workman was granted opportunity for his defence. The charges were proved against workman. Competent Authority decided to terminate his service. The services were terminated vide order dated 13-8-92. IInd party further pleaded if Tribunal finds enquiry vitiated, management be permitted to prove misconduct before Tribunal. IInd party has reiterated that charge sheet for unauthorised absence was issued to workman and after enquiry, the charges were found proved. The termination of Ist party workman for habitual absence is proper. IInd party prayed for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	"Whether the action of the Sub Area Manager, Kursia of SECL, Chirimiri Area, Distt. Surguja (MP) in dismissing Shri Bhondol S/o Chaitu, workman Kurasia Colliery w.e.f. 13-8-92 is legal and justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Relief prayed is rejected.

REASONS

5. Before dealing with evidence, I mention that the enquiry conducted against workman was found proper and legal as per order dated 22-3-13. Therefore contentions of workman that he was not given opportunity for his defence and needs no consideration. Workman as well as management did not adduce any evidence on other issues as to (1) whether charges are proved from evidence in Enquiry Proceedings, (2) Whether punishment of dismissal is proper & (3) to what relief workman is entitled? The documents of enquiry proceedings are produced by IInd party management. Exhibit W-1 is copy of report submitted by Conciliation Officer to the Government, Exhibit W-2 is reply submitted before ALC, Shahdol. Said documents finds reference that in application dated 26-7-94 workman had stated that he is not able to work. In Application dated 28-12-93 stated that he is not able to work. That he had authorized his brother on the ground that he is not able to defend the case due to ill health. Exhibit W-3 is charge sheet issued to workman as per standing order Clause 26.30 related to absence from duty without sanctioned leave or sufficient cause beyond sanctioned leave. Exhibit W-4 is finding of Enquiry Officer that charges were proved. W-5 is that Enquiry Officer has explained charges and workman denied charges against him. Exhibit W-6 is copy of findings recorded by the Enquiry Officer. Exhibit W-8 is notice issued by ALC, Shahdol. Exhibit W-9 is reply submitted before ALC. W-10 is notice given by ALC to IInd party. Exhibit W-13 is application submitted by workman to ALC claiming employment regarding payment of wages. W-15 is order of dismissal, W-17 is copy of order of reference. All those documents are not related to the charges alleged against workman. The application dated 26-5-92 submitted by workman clearly spells that he had committed mistake, he had committed mistake he had admitted charge and beg to be excused. Enquiry officer recorded statement of workman. Workman stated that his wife was seriously ill therefore he could not give intimation about his absence. He assured management not to repeat such misconduct in future. Copies of the attendance register are produced before Enquiry Officer. Workman remained absent in the reference proceeding. Absolutely no evidence is adduced by workman. Considering above aspects, I donot find reason to interfere with findings of Enquiry Officer about the punishment of dismissal imposed against him. For above reasons, I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

(1) The action of the Sub Area Manager, Kursia of SECL, Chirimiri Area, Distt. Surguja (MP) in dismissing Shri Bhondol S/o Chaitu, workman Kurasia colliery w.e.f. 13-8-92 is proper and legal.

(2) Workman is not entitled to relief prayed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1670.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 61/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-22012/44/1998-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1670.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL and their workmen, received by the Central Government on 30/05/2014.

[No. L-22012/44/1998-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/61/99

PRESIDING OFFICER : SHRI R.B. PATLE

General Secretary,
Pench Kanhan Khadan Karmchari Sangh,
Post Damua,
Distt. Chhindwara (MP) .....Workman/Union

Versus

General Manager,
Pench Area,
Western Coalfields Area,
Post Parasia,
Distt. Chhindwara (MP) .....Management

AWARD

Passed on this 15th day of April, 2014

1. As per letter dated 22-1-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-22012/44/98/IR(CM-II). The dispute under reference relates to:

> "Whether the action of the management of Western Coalfields Ltd. Pench Area, Distt. Chhindwara in not providing dependent employment to Smt. Ramkali Bai, wife of late Mehtab S/o Lalchand within two months of death of Shri Mehtab is legal and justified? If not, to what relief is she entitled?"

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by General Secretary of the Ist party Union. Case of Union is that NCWA signed time to time are binding on parties. NCWA-II Clause 9 provides employment to the dependents of the deceased employee who dies during service period, his dependents to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years are eligible for compassionate employment.

3. That Shri MehtabS/o Lalchand was appointed in WCL on 18-8-72. He was subsequently promoted as Security Guard in Bhamauri Colliery of WCL in Pench Area, he suddenly died on 15-5-79 leaving his widow, 2 daughters and one son and mother as his dependents. As per Bipartite Agreement, one dependent of the deceased was entitled for employment as per NCWA-II implemented from January 1979. Management denied appointment to the dependent even denied payment of gratuity amount and PF Amount to the widow of deceased. Ist party Union has referred to ratio held in various cases. It is submitted that the widow of deceased is entitled for appointment as per the bipartite agreement and prays for suitable order.

4. IInd party filed Written Statement at Page 7/1 to 7/8. IInd party submits that dispute raised by General Secretary of Union is not tenable. Deceased was not member of said Union. The services of deceased Mehtab were automatically terminated w.e.f. 17-8-79 for unauthorized absence. Therefore the reference is not tenable at instance of Union. The dispute is raised after 20 years. Lapse of 20 years is not tenable.

5. IInd party submits that Late Mehtab was working as watchman at Bhamori colliery of Pench Area. He was appointed w.e.f. 18-8-1972. He was habitual absentee. The service conditions of employees are covered by NCWA and standing orders. Mehtab was continuously absent from 1-2-1979. His where abouts were not known to the management. He was absent unauthorisely without intimation. Several letters were issued to him for resuming duties. However Mehtab did not turnup for duty form 16-8-79. As per clause-19 of certified standing orders applicable to IInd party, services of Shri Mehtab were terminated. Management had written letter dated 13-6-97 to Post Master for issuing certificate with regard to the service of letters. The postal department had informed by letter that the relevant letters were served on the workman. It is reiterated for unauthorized absence of Shri Mehtab whose services were terminated from 17-8-79. Union is claiming appointment on compassionate ground contending that Mehtab died on 15-5-79. The dispute is raised belatedly after 20 years. It is reiterated that the employment on compassionate ground is not tenable. Said benefit is allowed purely on humanitarian consideration with object to provide livelihood to family members of the deceased. The dispute raised after 20 years shows that after death of workman, the family or his dependents are not in crisis.

6. IInd party submits that as per the statement of claim, the age of Ramkali Bai is shown 20 years. She was not born at the time of death of Mehta, she cannot be said dependent of Mehtab. All other material contentions of Union are denied. The ratio held in the judgments referred in Statement of Claim is relevant. On such grounds, IInd party prays for rejection of claim.

7. Ist party Union submitted rejoinder after Written Statement filed by the management. That after Mehtab died on 15-5-79, amount of gratuity was paid on 19-6-93 after period of 18 years. That amount of CMPF contribution was not is paid to the widow of the workman till date of filing rejoinder. It is further submitted that the workman was not served with any chargesheet or notice, he was dismissed without notice after his death. It is reiterated that he accepted methods of filling permanent vacancies by the company including operating provisions of NCWA-III. The employment to dependents, reference is required to be given. On such contentions, Ist party workman prays for appointment of widow of the deceased workman.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Western Coalfields Ltd. Pench Area, Distt. Chhindwara in not providing dependent employment to Smt. Ramkali Bai, wife of	In Negative

late Mehtab S/o Lalchand within two months of death of Shri Mehtab is legal and justified?

(ii) If not, what relief the workman is entitled to?" As per final order.

REASONS

9. Present reference relates to employment of widow of deceased employ Mehtab. As per provisions of NCWA-II, parties are in dispute that services of employees of IInd party are covered by NCWA. IInd party is claiming that services of Mehtab were terminated from 17-8-79 as per Clause 19 of the Bipartite Agreement. Ist party submits that workman died on 15-5-79. Affidavit of evidence is filed by Shri Ramkali Bai widow of deceased Mehtab. She has stated that Mehtab died on 15-5-79 while working as Security Guard. At the time of death of her husband, she was of 21 years of age. That her daughter Samiya bai, son Sunil Kumar were dependent as left by her husband. IInd party is not given any notice about termination of service of Mehtab. In her cross-examination, Ramkali Bai says her husband died about 20 years before the dispute was raised. She claims ignorance about the period of working of her husband. That her husband was terminated after his death. He denied suggestion by management that her husband was terminated much before his death, impliedly death of workman Mehtab is not disputed. After death of her husband, she did not receive amount of gratuity or PF. That her husband has no other wife. Her name was recorded as wife in the colliery records.

10. Management's witness Dinesh Kumar in his affidavit of evidence has stated that Mehtab was appointed on 18-8-72 at Bhamori Colliery. He was absent from duty from 1-2-1979 unauthorisely without intimation. His services were terminated on 16-8-79. Though management's witness has referred Annexure M-1 to M-5, and other papers, any of those documents are not proved from evidence of management's witness. The witness of the management in Para-8 states as service of Mehtab were terminated, his widow is not entitled to compassionate appointment. In his cross-examination, management's witness says no notice was issued to the Ist party workman for absence prior to February 1979. He denies that intimation about death of her husband was given in writing in July 1979. As Exhibit M-5 was not given by Ramkali, Gratuity amount was paid in 1993 to her as per order of ALC. He claims ignorance about provisions of NCWA. That husband of Ramkali was served with notice before termination of service but no enquiry was conducted against him.

11. Evidence of Ramkali bai and management's witnesses are carefully considered. The services of Mehtab husband of Ramkali Bai was terminated from 15-5-79. The termination order is not proved by management's witness. The prior communication is also not proved by the management's witness. The termination of service after death of Mehtab cannot be said legal. Death is an act of God. The employment had come to an end by death of Mehtab. Prior to termination of Mehtab, as he died on 15-5-79 leaving wife, two daughters and one son as his dependent. Copy of NCWA-II clause 9 is produced by IInd party. Clause 9.5(iv) provides-

The dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment.

12. At the time of argument, the provisions about employment on compassionate ground provided under NCWA-II Clause 9 was not in dispute. Learned Counsel for IInd party Mr. Sharad Punj has pointed out my attention to the affidavit of Smt. Ramkali Bai. Her age is shown 70 years on date of filing affidavit i.e. 24-4-2011. Thus she is not eligible for her appointment on compassionate ground. In her affidavit, Ramkali Bai has also claimed suitable compensation. Clause 9.5.0(ii) provides-

> "In case of death/total permanent disablement due to causes other than mine accident and medical unfitness under clause 9.4.0 if the female dependant is below the age of 45 years she will have the option either to accept the monetary compensation of Rs.2000 per month or employment."

In present case at the time of death of Mehtab, Ramkali was of 21 years age . However the dispute is referred after about 20 years. At the time of reference, the age of Ramkali Bai was more than 35-40 years and therefore she is not entitled for employment on compassionate ground. However as per clause 9.5.0 (ii), she is entitled to compensation Rs. 2000 per month.

13. Learned Counsel for Ist party Mr. Praveen Yadav submits that above said allowance under Clause 9.5.0(ii) be allowed from death of Mehtab i.e. from 15-5-79. However legal position is shattered that the award can be get effective from the date of order of reference or date of award subject to the satisfaction of the Tribunal. Considering the present reference is made by Central Govt. as per order dated 22-1-98, in my considered view, the allowance under Clause 9.5.0 (ii) Rs. 2000 per month can be allowed accordingly. For above reasons, I record my finding in Point No.1 in Negative, Point No.2 Ramkali Bai widow of deceased Mehtab be paid allowance Rs. 2000 as per clause 9.5.0(ii) of NCWA.

14. In the result, award is passed as under:-

(1) The action of the management of Western Coalfields Ltd. Pench Area, Distt. Chhindwara in not providing dependent employment to Smt. Ramkali Bai, wife of late Mehtab S/o Lalchand is illegal.

(2) IInd party is directed to pay allowance Rs. 2000 per month to Shri Ramkali Bai from 22-1-1998 till her death.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1671.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 34/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 प्राप्त हुआ था।

[सं. एल-22012/246/2012-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1671.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of Singareni Collieries Co. Limited and their workmen, received by the Central Government on 30/5/2014.

[No. L-22012/246/2012-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 1st day of January, 2014

INDUSTRIAL DISPUTE No. I.D. 34/2013

Between :

The President,
(Sri Bhandari Satyanarayana)
Telangana Trade Union Council,
H. No.-5-295, Indra Nagar,
Opp. Bus Stand, Mancherial – 504208,
Adilabad Dist. ....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Limited,
Mandamarri Division,
Mandamarri – 504 231,
Adilabad ....Respondent

Appearances:

For the Petitioner : NIL

For the Respondent : M/s P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/246/2012-IR(CM-II) dated 19.2.2013 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

"Whether the action of the management of General Manager of M/s. Singareni Collieries Company Ltd., Mandamarri Area, Mandamarri, Adilabad District in terminating the services of Sri Md. Sayyed, Ex-Coal Filler, KK-5 Inc., SCCL, Mandamarri Area with effect from 28.12.1999 is justified or not? If not, to what relief the applicant is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 34/2013 and notices were issued to the parties.

2. The case stands posted for filing of claim statement and documents.

3. Petitioner called absent and there is no representation. Inspite of giving notice time and again Petitioner is not appearing and taking interest in the proceedings. In the circumstances, taking that Petitioner got no claim to be made, 'Nil' award is passed.

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 30 मई, 2014

का.आ. 1672.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 27/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 प्राप्त हुआ था।

[सं. एल-22012/199/2011-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1672.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 27/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Co. Limited and their workmen, received by the Central Government on 30/5/2014.

[No. L-22012/199/2011-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 29th day of January, 2014

INDUSTRIAL DISPUTE NO. I.D. 27/2012

Between :

The Branch Secretary,
(Sri N. Kistaiah),
Singareni Collieries Workers Union(AITUC),
Mandamarri Branch, Mandamarri,
Adilabad District ...Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Limited,
Mandamarri Division, Mandamarri,
Adilabad Dist-504231. ...Respondent

Appearances:

For the Petitioner : NIL

For the Respondent : Representative

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/199/2011-IR(CM-II) dated 14.2.2012 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

"Whether the action the management of M/s. Singareni Collieries Company Ltd., Mandamarri Division, Adilabad Dist., in fixation of basic wages of Coal Fillers confirming them as Coal Cutters, Trammers and Support men based on their wages earned as General Mazdoor in respect of Shri Manthena Bhoomaiah and 16 others (List enclosed) w.e.f. 1.9.2006 is justified? To what relief the workmen are entitled to?"

The reference is numbered in this Tribunal as I.D. No. 27/2012 and notices were issued to the parties.

2. The case stands posted for filing of claim statement and documents.

3. Petitioner called absent. Claim statement not filed and there is no representation. Inspite of giving fair opportunity time and again, Petitioner is not taking any interest in the proceedings. In the circumstances, taking that Petitioner got no claim to be made, 'Nil' award is passed.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 29th day of January, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 30 मई, 2014

का.आ. 1673.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ए.एस.आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 130/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-42012/41/2005-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1673.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 130/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Archaeological Survey of India and their workmen, received by the Central Government on 30/5/2014.

[No. L-42012/41/2005-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/130/05

PRESIDING OFFICER : SHRI R.B.PATLE

Shri Dorilal Yadav,
Vill Taalpura,
Tehsil Buani,
Distt. Sehore (MP) ...Workman

Versus

Superintendent Archaeologist,
Archaeological Survey of India,
G.T.B. Complex, T.T. Nagar,
Bhopal (MP) ...Management

AWARD

Passed on this 28th day of April, 2014

1. As per letter dated 6-12-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42012/41/2005-IR(CM-II). The dispute under reference relates to:

> "Whether the action of Superintending Archaeologist, Archaeological Survey of India, Bhopal in terminating the services of Shri Dorilal Yadav w.e.f. 23-1-97 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Pages 5/1 to 5/4. Case of Ist party is that he was initially appointed on temporary basis as Monument Attendant of Central Circle, Bhopal on 20-4-76. He performed his duties to the satisfaction of his superiors. As per letter dated 26-8-85, workman was directed to approach CSG-II Bhopal for regularization of his services. Then immediately he had met said authority at Bhopal requesting regularization of his services as he had worked more than 240 days. At the time of his meeting, the authority was directed to put his signature on certain papers written in English. Workman was not able to read the contents as he is educated only upto 7th class from Hindi Medium School.

3. Workman further submits that CSG-II Bhopal did not regularize his services after he reached CSG-II Bhopal office for regularization. It is alleged that authority had demanded some gratification from him and one Ram Kishan but they could not fulfill his demand. Consequently they were not regularized. Workman was disengaged from temporary service. He further submits that he continuously worked from 24-4-76 to 23-1-97. Instead of regularizing his services, he was terminated on 23-1-97. Termination of his service amounts to illegal retrenchment for violation of Section 25-F of I.D. Act, workman prays for his reinstatement with back wages. Workman further submits that employees junior to him are still working with IInd party. IInd party had violated Section 25-G of I.D.Act. On such grounds, he prays for reinstatement.

4. Despite of repeated notices, IInd party did not cause appearance. Ex parte order was passed against IInd party on 22-6-2011.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of Superintending Archaeologist, Archaeological Survey of India, Bhopal in terminating the services of Shri Dorilal Yadav w.e.f. 23-1-97 is legal and justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. Though workman is challenging termination of his service for violation of Section 25-F, G of I.D.Act, IInd party proceeds ex parte. Workman has not participated in reference proceedings. He has failed to adduce evidence in support of his claim. The evidence of workman was closed on 25-4-2013. Management also did not participate in reference proceeding for failure to adduce evidence in support of his claim by workman, his contentions cannot be accepted therefore, I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:-

(1) The action of Superintending Archaeologist, Archaeological Survey of India, Bhopal in terminating the services of Shri Dorilal Yadav w.e.f. 23-1-97 is legal and proper.

(2) Workman is not entitled to relief prayed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1674.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी.पी.डब्ल्यू.डी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 75/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 प्राप्त हुआ था।

[सं. एल-42012/87/2003-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1674.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 75/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Central Public Works Department and their workmen, received by the Central Government on 30/5/2014.

[No. L-42012/87/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No.75/2004

Registered on 17.3.2005

1. The Zonal Secretary,
All India CPWD (MRM)
Karamchari Sanghathan (Regd.)
CPWD Store Building Sector 7B,
Chandigarh.

2. Sh. Chotar Singh,
Son of late Sh. Kishan Singh,
Office of the Executive Engineer,
Central Electrical Division,
Sub-Division No.4, CPWD,
Chandigarh Kendriya Sadan,
3rd Floor, Sector 9A, Chandigarh,
C/O All India CPWD (MRM)
Karamchari Sangathan (Regd.) through
Zonal Secretary, CPWD Store Building,
Sector 7B, Chandigarh. ...Petitioner

Versus

The Executive Engineer,
Central Public Works Department,
Chandigarh Central Electrical Division,
Kendriya Sadan, Sector 9A,
Chandigarh. ...Respondents

Appearances :

For the Workman : Sh. S.D. Sharma Adv.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on-15.5.2014

Central Government vide Notification No. L-42012/87/2003 IR(CM-II)) Dated 25.2.2005, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial Dispute for adjudication to this Tribunal:-

> "Whether the action of the management of CPWD, Chandigarh in not regularizing the services of Sh. Chotar Singh, Electrical Khalasi w.e.f. 5.7.95 is legal and justified? If not, to what relief the concerned workman is entitled?"

Notice was given to the parties and in pursuance thereof the claimant submitted statement of claim pleading that claimant No.2 (hereinafter called the workman) was employed by the management as Khalasi through a contractor w.e.f. 5.7.1995 to 7.3.2004 for attending the work of perennial in nature of management. He worked under the complete control of the management with devotion and sincerity. That the Ministry of Labour vide Notification No. 690 dated 31.7.2002 under Section 10(1) of the Contract Labour (Regulation and Abolition), Act, 1970 abolished the contract system regarding various jobs on contract basis. That there was direct relationship of employer and employee between the workman and the management and the arrangement of engaging him through the contractor was designed to deprive him of the benefits and protection provided under labour laws. That he has been discharging the same functions as are discharged by the regular employees but was denied equal pay for equal work. That his services were abruptly terminated on 1.4.2004 without payment of any compensation and the persons junior to him were retained in service. That he has completed more than 240 days of service in a given year. He has prayed that the act of the management in not regularizing his services against available sanctioned post of Khalasi is unjust and unfair and he is entitled to be regularized as Khalasi and he is entitled to equal pay for equal work.

Respondent management filed written statement denying the relationship and pleaded that workman was never engaged by the management and he was not paid anything by it. It entered into a contract with the contractor and the contractor may have deployed the persons for the performance of the job as per conditions of the contract. The department cannot verify whether the workman was actually engaged by the contractor. Management paid the amount under the agreement to the contractor who in turn paid the wages to the persons engaged by him. It is specifically denied that the workman was employed as a Khalasi. Since the workman was not engaged by the respondent/management, there is no relationship of master and servant between the parties. That the contract entered into between the respondent management and the contractor is not a sham transaction.

In the rejoinder the workman reiterated his case as set out in the claim petition and further pleaded that he is

under the control, supervision and authority of the respondent/management.

In support of his case, the workman has examined Chaman Lal, A.E., Rajinder Singh and himself appeared in the witness box.

Chotar Singh workman filed his affidavit reiterating the case as set out in the statement of claim and further placed on record photocopy of the attendance register mark WW3/1 to mark WW3/17.

Chaman Lal A.E who is from the management has deposed that department do not maintain any service record of the labour as the work is done by the contractor. That the workers report for work to the Junior Engineer. However he has identified his initials on the entries in the attendance register from April 1997 to August 1997 mark as WW1/3 to WW1/17.

Rajinder Singh has filed his affidavit deposing that workman was working in the Electrical Sub Division, Sector 33, Chandigarh and his services were terminated on 31.3.2004.

On the other hand the management has examined Sh. Rajesh Kumar Gupta who filed his affidavit reiterating the case of the respondent/management as set out in the written statement.

I have heard Sh. S.D. Sharma, counsel for the workman and Sh. Anish Babbar, counsel for the management.

It may be added that the according to the workman, his services were terminated on 1.4.2004. Though he has pleaded that he was not paid any retrenchment compensation, and the persons junior to him were retained in service; but he did not seek any relief regarding reinstatement in service nor the terms of reference contain such a relief.

Therefore the fact whether the services of the workman were terminated and that too without payment of compensation and the persons junior to him were retained in service are not to be considered.

The only contention raised by the learned counsel for the workman is that workman was working under the direct control of the management and his job is of perennial in nature and since he worked for quite a long period, he was an employee of the respondent/management and the contract entered into between the contractor and the management was a sham transaction; and his services are to be regularized.

In support of his contentions he has carried me through the CPWD Contract Labour Regulations, and Contract Labour (Regulation and Abolition) Act, 1970 as well through the statement of Chaman Lal, AE, where he admitted his initials on the attendance register mark WW3/1 to mark WW3/17.

In Ram Singh and Others Vs. Union Territory Chandigarh and Others reported in (2004) 1 SCC it was observed by Hon'ble Apex Court in paras 15 and 16 of the judgment as follows :

(15) In determining the relationship of employer and employee no doubt control is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole test of control. An integrated approach is needed. Integration test is one of the relevant tests. It is applied by examining whether the persons was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organize the work, supply tools and materials and what are the mutual obligations between them.

(16) Normally, the relationship of employer and employee does not exist between an employer and a contractor and the servant of an independent contractor. Where, however an employer retains or assumes control over the means and method by which the work of a contractor is to be done, it may be said that the relationship between employer and employee exists between him and the servants of such a contractor. In such a situation the mere fact of formal employment by an independent contractor will not relieve the master of liability where the servant is in fact, in his employment. In that event it may be held that an independent contractor is created or is operating as a subterfuge and the employee will be regarded as the servant of the principal employer. Whether a particular relationship between employer and employee is genuine or a camouflage through the mode of a contractor, is essentially a question of fact to be determined on the basis of the features of the relationship, the written terms of employment, if any, and the actual nature of the employment. The actual nature of relationship concerning a particular employment being essentially a question of fact it has to be raised and proved before an industrial adjudicator.

Thus the workman has to prove that he used to receive remuneration from the respondent/management who has the power to select and dismiss him to establish relationship of employer and employee between the parties. If Chaman Lal, A.E. admits his initials on the attendance register the same only shows that he has some supervision over the workman and there is nothing on the file to suggest that it was the management who had the power to select and dismiss the workman and he used to receive remuneration from the management and there was any mutual obligations and in the absence of the said facts, it

cannot be said that there was direct relationship of employer and employee between the workman and the management. If the workman worked for quite some time with the management the same again do not prove the relationship of master and servant between the parties.

Even if it is taken that there is relationship of employer and employee, the workman is not entitled to regularization of services. In the latest pronouncement Secretary, State of Karnataka Vs. Uma Devi reported in A.I.R. 2006 SC 1806, the Hon'ble Apex Court observed that employees who were not appointed by observing the regular procedure and rules are not entitled to regularization of their services. The Hon'ble Apex Court observed in para 1 of the judgment as follows:-

Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional Scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the Constitutional Scheme.

It was further observed in para 5 of the judgment as follow :—

The power of a state as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily. Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. The article contemplates the drawing up of a procedure and rules to regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment and for services of controlled by detailed procedures which specify the necessary qualifications, the mode of appointment etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules.

The Hon'ble Apex Court further observed in para 34 of the judgment as follows:-

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, appointment comes to an end at the end of the contract, if it were an engagement of appointment on daily wages or casual basis; the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period employment has come to an end or of ad hoc employee who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional Scheme. Merely because an employee had continued under cover of an order of court, which we have described as litigious employment in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases the High court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the state the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the state or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandate.

Thus, an employee who is not appointed as per terms of the relevant rules and regulations, his services cannot be regularized. Since it is the case of the workman himself that he was employed through a contractor and not as per any rules and regulations of the department, the department was not required to regularize his services and it cannot be held that he is entitled to regularization of his services as claimed by him.

Thus, it is not proved that there was a relationship of employer and employee between the workman and the respondent management and he is not entitled to regularization of the services and accordingly the reference

is answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1675.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी.पी.डब्ल्यू.डी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 72/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-42012/96/2003-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1675.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Central Public works Department and their workmen, received by the Central Government on 30/05/2014.

[No. L-42012/96/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present : SRI KEWAL KRISHAN, Presiding Officer.

Case No. I.D. No. 72/2004

Registered on 17.3.2005

1. The Zonal Secretary,
   All India CPWD (MRM)
   Karamchari Sangathan (Regd.)
   CPWD Store Building Sector 7B,
   Chandigarh

2. Sh. Hardeep Singh,
   S/o Sh. Rattan Singh,
   Wireman, Office of the Executive Engineer,
   Chandigarh Central Electrical Division,
   Sub-Division No.5, CPWD,
   Kendriya Sadan, Sector 9A,
   Chandigarh, C/o All India CPWD (MRM)
   Karamchari Sangathan (Regd.)
   through: Zonal Secretary,
   CPWD Store Building,
   Sector 7B, Chandigarh. .....Petitioner

Versus

The Executive Engineer,
Central Public Works Department,
Chandigarh Central Electrical Division,
Kendriya Sadan, Sector 9A,
Chandigarh. .....Respondents

APPEARANCES

For the Workman : Sh. S.D. Sharma, Adv.

For the Management : Sh. Anish Babbar, Adv.

AWARD

Passed on 15.5.2014

Central Government vide Notification No. L-42012/96/2003 IR(CM-II)) Dated 25.2.2005, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of CPWD, Chandigarh in not regularizing the services of Sh. Hardeep Singh, Wireman w.e.f. 28.12.98 is legal and justified? If not, to what relief the concerned workman is entitled?"

In response to the notice the Claimant No.2 (hereinafter called workman) appeared and submitted statement of claim pleading that he was employed by the respondent management on a Contract Labour System as Wireman through the contractor w.e.f. 28.2.1998 for attending the work of perennial nature of the management. He worked with a great devotion and there was no complaint against him. He worked under the direct control, direction and authority of the management.

It is further pleaded that the contract entered into by the respondent management and the contractor is a sham transaction and there is a direct relationship of principal employer and employee between the respondent management and the workman. That the Ministry of Labour vide Notification No.690 dated 31.7.2002 under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 abolished employment of Wireman, Khalasi etc. on contract basis. That vacant sanctioned posts are available with the respondent management. Regular employees are discharging the same and similar functions as are being discharged by the workman. Thus the workman is entitled to equal pay and allowances as being given to regular employees and since he is a direct employee of the management, he is entitled for the regularization of services from the date of his initial appointment. It is also pleaded that he has completed more than 240 days in each year.

Respondent management filed written statement denying the relationship and pleaded that workman was never engaged by the management and he was not paid

anything by it. It entered into a contract with the contractor and the contractor may have deployed the persons for the performance of the job as per conditions of the contract. The department cannot verify whether the workman was actually engaged by the contractor. Management paid the amount under the agreement to the contractor who in turn paid the wages to the persons engaged by him. It is specifically denied that the workman was employed as a wireman. Since the workman was not engaged by the respondent management, there is no relationship of master and servant between the parties. That the contract entered into between the respondent management and the contractor is not a sham transaction.

In the rejoinder the workman reiterated his case as set out in the claim petition and further pleaded that he is under the control, supervision and authority of the respondent management.

Parties were afforded opportunity to lead evidence.

In support of his case the workman examined S.K. Verma, Raj Kumar and Hardeep Singh workman himself appeared in the witness box.

Hardeep Singh filed his affidavit reiterating the case as set out in the claim petition.

Raj Kumar has deposed in his affidavit that he is posted as a Chowkidar. That Hardeep Singh was employed on contract Labour System as Wireman by the respondent department. Sh. S.K. Verma, Junior Engineer has deposed that some of the CPWD buildings are maintained by the respondent department. That the workman is a contract labourer and was working under him. He reports for duty to his contractor and he (the witness) check his working. He has further identified his signature on the application Exhibit WW2/1 and duty chart Exhibit WW2/2. He also identified his signatures at several places in the logbook for the year 2002 to 2004.

On the other hand the management examined Sh. Rajesh Gupta, XEN,who filed his affidavit reiterating the stand as taken by the respondent management in its written statement.

I have heard Sh. S.D. Sharma, counsel for the workman and Sh. Anish Babbar counsel for the management and have gone through the written arguments submitted on behalf of the workman also.

The learned counsel for the workman carried me through the CPWD Contract Labour Regulations; and Contract Labour (Regulation and Abolition) Act, 1970 and further carried me through the various definitions regarding'workman', 'contract labour', 'principal employer' etc. and submitted that the workman who is allegedly hired through the contractor as a Wireman is actually an employee of the respondent management and he works under its control and supervision and the contract agreement is a sham transaction. He has further submitted that this Court can go through the facts to lift the veil and to find whether the contract is genuine and if the same is not found to be genuine, then it is to be presumed that workman is an employee of the respondent management. The learned counsel further carried me through the documents Exhibit MW2/1 and the duty Chart Exhibit WW2/2 and through the logbook as well as through the statement of Sh. S.K. Verma, Junior Engineer who admits his signature on the said documents, to contend that the workman has actually worked under the control and supervision of the officer of the respondent management and it is proved that he is an employee of the respondent management and his services are to be regularized. The learned counsel also relied on authorities –

1. 2007 (3) SCT 51: Zonal Manager, Food Corporation of India Vs. The workmen.
2. (2004) 1 SCC 127: Ram Singh Vs. Union Territory, Chandigarh.
3. (2003) 6 SCC 528: Bharat Heavy Electricals Ltd. Vs. State of UP.
4. (2001) 7 SCC: Steel Authority of India Ltd. & others Vs. National Union Waterfront Workers.
5. CWP No.8741 of 1998 of decided on 26.5.2000 by Delhi High Court.

The proposition of law, as laid down in the said authorities, is that if contract is found to be camouflage, the contract labour is to be treated as employees of the principal employer. In Steel Authority of India Ltd. and others Vs. National Waterfront Workers reported in (2001) 7 SCC, it was observed by the Hon'ble Apex Court in para 71 of the judgment as follows:-

By definition the term "contract labour" is a species of workman. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in an establishment by the principal employer; or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But where a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, question might arise whether the contractor is a mere camouflage as in Hussainbhai case and in Indian Petrochemicals Corpn. Case etc.; if the answer is in the affirmative, the workman

will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will be a contract labour.

It was further observed in para 125(5) and Para 125(6) of the judgment as follows:-

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Thus it was held by the Hon'ble Apex Court that if the workman is hired by the principal employer through the contractor then there is a relationship of master and servant between the principal employer and the workman, and if the workman is hired by the contractor then the Court is to see whether the contract is genuine one. If the contract is not genuine and is a mere camouflage, the contract labour is to be treated as employee of the principal employer whose services are to be regularized subject to the conditions as stated in para 125(6) of the judgment and reproduced above.

It may be added that conduct of the respondent management is not fair in the present case. It has totally denied that the workman worked for it in its written statement and simply pleaded that contractor may have engaged him. But Sh. S.K. Verma, an officer of the department, when examined by the workman admitted his signatures on the application dated 6.2.2003 whereby, the request of the workman for change of duty was accepted. He also admitted his signatures on the duty chart Exhibit WW2/2 whereby the duty performed by the workman was noted. Again he admitted his signatures in the logbook produced on the file in which the presence of the workman has been specifically marked being on duty and this logbook relates to the year 2002 to 2004. In view of this statement of Sh. S.K. Verma and these documents, it was not fair on the part of the management to deny whether the workman was actually working for it or not.

Now the question to be seen is whether the workman is actually an employee of the contractor or of the respondent management and whether the said documents are sufficient to hold that there is a relationship of employer and employee between the workman and the respondent management. The workman himself has pleaded that he was employed on contract labour system as Wireman but alleged that he was employed through the contractor w.e.f. 28.2.1998. Thus he admits that he work as a contract labourer. It is the workman who has come to the court with specific assertions that he is actually an employee of the respondent management and not of the contractor, and therefore, it was for him to prove the said fact.

It is not pleaded that his services were hired by the management itself. Therefore the statement of the workman during cross-examination that he was engaged by the department through a JE is of no avail to him. He has further deposed that it was the contractor who was making payment of wages to the workman. In Ram Singh and others Vs. Union Territory Chandigarh and others reported in (2004) 1 SCC it was observed by Hon'ble Apex Court in para 15 and 16 of the judgment as follows :

(15) In determining the relationship of employer and employee no doubt control is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole test of control. An integrated approach is needed. Integration test is one of the relevant tests. It is applied by examining whether the persons was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are who has the power to select and dismiss, to pay remuneration, deduct insurance contributions,

organize the work, supply tools and materials and what are the mutual obligations between them.

(16) Normally, the relationship of employer and employee does not exist between an employer and a contractor and the servant of an independent contractor. Where, however an employer retains or assumes control over the means and method by which the work of a contractor is to be done, it may be said that the relationship between employer and employee exists between him and the servants of such a contractor. In such a situation the mere fact of formal employment by an independent contractor will not relieve the master of liability where the servant is in fact, in his employment. In that event it may be held that an independent contractor is created or is operating as a subterfuge and the employee will be regarded as the servant of the principal employer. Whether a particular relationship between employer and employee is genuine or a camouflage through the mode of a contractor, is essentially a question of fact to be determined on the basis of the features of the relationship, the written terms of employment, if any, and the actual nature of the employment. The actual nature of relationship concerning a particular employment being essentially a question of fact it has to be raised and proved before an industrial adjudicator.

Thus the workman has to prove that he used to receive remuneration from the respondent management who has the power to select and dismiss him to establish relationship of employer and employee between the parties. No doubt the statement of Sh. S.K. Verma coupled with the documents discussed above, it is proved that the workman has been working under the control of the respondent management. But it is not proved on the file that management had the power to select and dismiss him and the workman used to receive remuneration from it or the management was responsible for deducting compulsory contributions and there were any mutual obligations; and in the absence of said factors, it cannot be said that there is a direct relationship of an employer and employee between the workman and the management; and the contract is not a sham transaction.

The argument that workman has been working with the management since 1998 and is still in its employment; and the same is sufficient to prove that there is a relationship of master and servant between the parties, is of no help to the workman. If the workman has been working for a sufficient long period under the contractor for the management, the same do not prove that he is an employee of the respondent management.

Even if it is taken that there is a relationship of employer and employee, the workman is not entitled to regularization of his services. In the latest pronouncement Secretary, State of Karnataka Vs. Uma Devi reported in A.I.R. 2006 S.C. 1806, the Hon'ble Apex Court observed that employees who were not appointed by observing the regular procedure and rules are not entitled to regularization of their services. The Hon'ble Apex Court observed in para 1 of the judgment as follows:-

> Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

It was further observed in para 5 of the judgment as follow:—

> The power of a state as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily. Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. The article contemplates the drawing up of a procedure and rules to regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment and for services of controlled by detailed procedures which specify the necessary qualifications, the mode of appointment etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules.

The Hon'ble Apex Court further observed in para 34 of the judgment as follows:-

> Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our constitution and since the rule of law is the core of our constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the constitution. Therefore, consistent with the scheme for public employment, this court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment,

appointment comes to an end at the end of the contract, if it were an engagement of appointment on daily wages or casual basis; the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period employment has come to an end or of ad hoc employee who by the very nature of their appointment, do not acquire any right. High Courts acting under article 226 of the constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of court, which we have described as litigious employment in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the state the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the state or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandate.

Thus, an employee who is not appointed as per terms of the relevant rules and regulations, his services cannot be regularized. Since it is the case of the workman himself that he was employed on contract labour system and not as per any rules and regulations of the department, his services cannot be ordered to be regularized.

In view of this proposition of this law, the failure of the management to produce the contractor and some record as summoned by the workman, is of no help to him.

Thus, it is not proved that there is a relationship of employer and employee between the workman and the respondent management and he is not entitled to regularization of the services and accordingly the reference is answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1676.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी.पी.डब्ल्यू.डी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 73/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-42012/93/2003-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1676.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 73/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Central Public Works Department and their workmen, received by the Central Government on 30/05/2014.

[No. L-42012/93/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri KEWAL KRISHAN, Presiding Officer

Case No. I.D. No.73/2004

Registered on 17.3.2005

1. The Zonal Secretary,
   All India CPWD (MRM)
   Karamchari Sangathan (Regd.)
   CPWD Store Building, Sector 7B,
   Chandigarh

2. Sh. Nagender Prasad Rai,
   S/o Sh. Som Nath Rai, Khalasi, Office of the
   Executive Engineer,
   Central Electrical Division,
   Sub-Division No.5, CPWD,
   Chandigarh Kendriya Sadan,
   3rd Floor, Sector 9A, Chandigarh

C/o All India CPWD (MRM)
Karamchari Sangathan (Regd.)
through Zonal Secretary,
CPWD Store Building, Sector 7B,
Chandigarh .....Petitioner

Versus

The Executive Engineer,
Central Public Works Department,
Chandigarh Central Electrical Division,
Kendriya Sadan, Sector 9A,
Chandigarh .....Respondents

APPEARANCES:

For the Workman : Sh. S.D. Sharma Adv.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on-15.5.2014

Central Government vide Notification No. L-42012/93/2003 IR(CM-II)) Dated 25.2.2005, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of CPWD, Chandigarh in not regularizing the services of Sh. Naginder Parsad Rai, Electrical Khalasi, w.e.f. 11.10.2000 is legal and justified? If not, to what relief the concerned workman is entitled?"

In response to the notice, the claimants submitted statement of claim and pleaded that claimant No.1 is the workman Union and claimant No.2 (hereinafter called the workman) is its member. That the workman was employed as Khalasi through contractor w.e.f. 11.10.2000. It is pleaded that though he was engaged through a contractor but he discharged his functions under the complete control of the management and the contract was entered into just to deprive him all the benefits of labour laws and the contract is a sham transaction. That there is a direct relationship of principal employer and employee between the management and the workman and he is entitled to regularization of his services but his services were abruptly terminated on 1.4.2004 without any notice, payment of compensation etc. and the persons junior to him were retained in service. That the Ministry of Labour vide Notification No. 690 dated 31.7.2002 abolished the employment of Khalasi etc. on contract in view of Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970. It is further pleaded that he discharged the same functions as are being discharged by the regular employees and he is entitled to more pay on the principle of equal pay for equal work.

The workman has prayed that the act of the management in not regularizing his services is unjust and illegal and he is entitled to regularization of his service against the sanctioned vacant post of Khalasi and with more pay on the principle of 'equal pay for equal work'.

Respondent management filed written statement denying the relationship and pleaded that workman was never engaged by the management and he was not paid anything by it. It entered into a contract with the contractor and the contractor may have deployed the persons for the performance of the job as per conditions of the contract. The department cannot verify whether the workman was actually engaged by the contractor. Management paid the amount under the agreement to the contractor who in turn paid the wages to the persons engaged by him. It is specifically denied that the workman was employed as a khalasi. Since the workman was not engaged by the respondent management, there is no relationship of master and servant between the parties. That the contract entered into between the respondent management and the contractor is not a sham transaction.

Parties led their evidence.

In support of his case the workman appeared in the witness box and examined Inderdev Tiwari and S.K. Verma.

Workman filed his affidavit reiterating the case as set out in the claim petition.

Inder Dev Tiwari has deposed that workman was working with the respondent department and his services were terminated on 1.4.2004.

S.K. Verma, a Junior Engineer of the respondent department has stated that workman was working with the contractor. A photocopy of register was shown to him but he did not identify his signature thereon.

On the other hand the management examined Sh. R.K. Gupta who filed his affidavit reiterating the case of the respondent management as set out in the written statement.

I have heard Sh. S.D. Sharma, counsel for the workman and Sh. Anish Babbar, counsel for the management and have gone through the file carefully.

It was argued by the learned counsel for the workman that the workman worked under the direct control and supervision of the officers of the respondent management and the contract entered into between the management and contractor is a sham transaction and since there was a direct relationship of principal employer and employee between the parties, the services of the workman are to be regularized and the act of the management in not regularizing his services is illegal.

I have considered the contention of the learned counsel.

The workman himself has pleaded that he was employed through contractor and nothing has come on the file that the said contract is a sham transaction as it is not proved on the file that workman used to receive remuneration from the management who had the power to select and dismiss him or there were any mutual obligations. Even if it is taken that he worked under the control and supervision of the management, the said sole fact is not sufficient to hold that he was an employee of the management.

Even if it is taken that there was a relationship of principal employer and employee between the parties, the workman is not entitled to regularization of his services. In the latest pronouncement Secretary, State of Karnataka Vs. Uma Devi reported in A.I.R. 2006 S.C. 1806, the Hon'ble Apex Court observed that employees who were not appointed by observing the regular procedure and rules are not entitled to regularization of their services. The Hon'ble Apex Court observed in para 1 of the judgment as follows:-

> Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

It was further observed in para 5 of the judgment as follow:-

> The power of a state as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily. Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. The article contemplates the drawing up of a procedure and rules to regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment and for services of controlled by detailed procedures which specify the necessary qualifications, the mode of appointment etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules.

The Hon'ble Apex Court further observed in para 34 of the judgment as follows:-

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our constitution and since the rule of law is the core of our constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the constitution. Therefore, consistent with the scheme for public employment, this court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, appointment comes to an end at the end of the contract, if it were an engagement of appointment on daily wages or casual basis; the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period employment has come to an end or of ad hoc employee who by the very nature of their appointment, do not acquire any right. High Courts acting under article 226 of the constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of court, which we have described as litigious employment in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases the High court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the state the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the state or its instrumentalities or lend

themselves the instruments to facilitate the bypassing of the constitutional and statutory mandate.

Thus, an employee who is not appointed as per terms of the relevant rules and regulations, his services cannot be regularized. Since it is the case of the workman himself that he was employed through a contractor and not as per any rules and regulations of the department, the department was not required to regularize his services and it cannot be held that he is entitled to regularization of his services as claimed by him.

Thus, it is not proved that there was a relationship of employer and employee between the workman and the respondent management and he is not entitled to regularization of the services and accordingly the reference is answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1677.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी.पी.डब्ल्यू.डी. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 816/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-42012/39/2003-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1677.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 816/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Central Public Works Department and their workmen, received by the Central Government on 30/05/2014.

[No. L-42012/39/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 816/2005

Registered on 7.9.2005

1. The Zonal Secretary,
   All India CPWD (MRM)
   Karamchari Sanghathan (Regd.)
   CPWD Store Building Sector 7B,
   Chandigarh.

2. Sh. Manjit Singh,
   S/o Sh. Gurdev Singh,
   Khalasi, represented by All India,
   CPWD (MRM)
   Karamchari Sangathan .....Petitioner

Versus

The Executive Engineer,
Central Public Works Department,
Chandigarh Central Electrical Division,
Kendriya Sadan, Sector 9A,
Chandigarh. .....Respondents

APPEARANCES

For the workman : Sh. S.D. Sharma Adv.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on-15.5.2014

Central Government vide Notification No. L-42012/39/2003-IR(CM-II) Dated 21.7.2003, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of CPWD for not regularizing the services of Sh. Manjit Singh Electrical Khalasi even consequent upon abolition of Contract Labour system as per Government of India, Ministry of Labour's notification dated 31.7.2002 is legal and justified? If not, to what relief the concerned workman is entitled to and from which date?"

In response to the notice, the claimants submitted statement of claim pleading that claimant No.1 is a workman Union and claimant No. 2 (hereinafter called the workman) is its member. That the workman was employed by the management as Khalasi through a contractor with effect from 17.9.1999. That the work is being supervised by the officials of the management. That the contractor entered into between the management and the contractor which is a sham transaction in order to deprive him of the benefits of the labour laws.

It is further pleaded that the Government vide Notification dated 31.7.2002 abolished the employment of contract labour issued under the Contract Labour (Regulation and Abolition), Act 1970. That he discharged the same functions as are being discharged by the regular employees but was not paid the wages as given to the regular employees. Since he is a direct employee of the

management, his services were to be regularized with the management. He has made the prayer that non-regularization of his service against the available sanctioned vacant post of Khalasi by the management from the date of his initial appointment i.e. 17.9.1999 is unjust and illegal and he is entitled to be regularized against the sanctioned post and he is entitled to same pay on the principle of equal pay for equal work.

Respondent management filed written statement denying the relationship and pleaded that workman was never engaged by the management and he was not paid anything by it. It entered into a contract with the contractor and the contractor may have deployed the persons for the performance of the job as per conditions of the contract. The department cannot verify whether the workman was actually engaged by the contractor. Management paid the amount under the agreement to the contractor who in turn paid the wages to the persons engaged by him. It is specifically denied that the workman was employed as a khalasi. Since the workman was not engaged by the respondent management, there is no relationship of master and servant between the parties. That the contract entered into between the respondent management and the contractor is not a sham transaction.

Parties led their evidence.

In support of his case the workman appeared in the witness box and examined Mohinder Pal and L.D. Gera.

Workman filed his affidavit reiterating the case as set out in the claim statement.

Mohinder Pal has stated that he is an employee of the respondent management and the workman worked there as a Khalasi.

Sh. L. D. Gera has deposed that workman had worked under him and he identified his initials at certain pages on the Inquiry Officer's register.

On the other hand the department examined Sh. R.K. Gupta who filed his affidavit reiterating the case as set out in the written statement.

I have heard Sh. S.D. Sharma, counsel for the workman and Sh. Anish Babbar, counsel for the management and have gone through the file carefully.

The only contention raised by the learned counsel at the time of arguments is that workman is actually an employee of the respondent management and the contract system is a camouflage to avoid the implications of the labour laws and since the workman is an employee of the management, his services were to be regularized.

In support of his contention he has carried me through the statements of the witnesses and particularly of the L.D. Gera who is a Junior Engineer in the department and has stated that workman worked under him and submit that the management has the overall supervision and control over the workman and thus there is a relationship of principal employer and employee between the parties.

I have considered the contention of the learned counsel.

The statement of L.D. Gera do prove that workman worked under him and he was supervising his work but this sole fact is not sufficient to come to the conclusion that workman is an employee of the respondent management. It is the case of the workman himself that he was engaged through a contractor and there is nothing on the file to suggest that the said contract is a sham transaction. It is not proved on the file that workman was receiving remunerations from the respondent management who has the power to select and dismiss him, and there were mutual obligations and in the absence of the said facts it cannot be said that he is an employee of the management and the contract entered into between the management and the contractor is a sham transaction.

If for the sake of arguments, it is taken that there is a direct relationship of principal employer and employee between the parties, whether the workman is entitled to regularization of his services.

In the latest pronouncement Secretary, State of Karnataka Vs. Uma Devi reported in A.I.R. 2006 S.C. 1806, the Hon'ble Apex Court observed that employees who were not appointed by observing the regular procedure and rules are not entitled to regularization of their services. The Hon'ble Apex Court observed in para 1 of the judgment as follows :—

> Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

It was further observed in para 5 of the judgment as follow :—

> The power of a state as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily. Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. The article contemplates the drawing up

of a procedure and rules to regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment and for services of controlled by detailed procedures which specify the necessary qualifications, the mode of appointment etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules.

The Hon'ble Apex Court further observed in para 34 of the judgment as follows:-

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our constitution and since the rule of law is the core of our constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the constitution. Therefore, consistent with the scheme for public employment, this court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, appointment comes to an end at the end of the contract, if it were an engagement of appointment on daily wages or casual basis; the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period employment has come to an end or of ad hoc employee who by the very nature of their appointment, do not acquire any right. High Courts acting under article 226 of the constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of court, which we have described as litigious employment in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases the High court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the state the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the state or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandate.

Thus, an employee who is not appointed as per terms of the relevant rules and regulations, his services cannot be regularized. Since it is the case of the workman himself that he was employed through a contractor and not as per any rules and regulations of the department, the department was not required to regularize his services and it cannot be held that he is entitled to regularization of his services as claimed by him.

Thus, it is not proved that there was a relationship of employer and employee between the workman and the respondent management and he is not entitled to regularization of the services and accordingly the reference is answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1678.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पी.जी.आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 997/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-42012/181/2003-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1678.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 997/2005 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of PGIMER, Sector-12 and their workmen, received by the Central Government on 30/05/2014.

[No. L-42012/181/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No.997/2005

Registered on 16.9.2005

Sh. Yash Pal Sharma,
S/o Sh. Ramesh Kumar Sharma,
H. No. 1067, Sector 28-B,
Chandigarh. .....Petitioner

Versus

The Director,
PGI, Chandigarh .....Respondents

APPEARANCES

For the workman : Sh. N.K. Nagar Adv.

For the Management : Sh. N.K. Zakhmi Adv.

AWARD

Passed on-7.5.2014

Central Government vide Notification No. L-42012/181/2003-IR(CM-II)) Dated 19.7.2004, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of PGI, Chandigarh in terminating the services of Sh. Yash Pal Sharma, Data Entry Operator, Grade-A, w.e.f. 15.1.2002 is legal and justified? If not, to what relief the workman is entitled?"

The facts, in brief, are that respondent management sent requisition to Employment Exchange to send the names of eligible candidates for appointment to the post of Data Entry Operator Grade A in the year 1999. The name of the workman was sponsored along with other candidates. He appeared in the computer test and qualified the same. He also appeared for the interview on 27.4.1999 before a duly constituted Selection Committee. The Committee prepared a penal of selected candidates and his name was shown at Serial No.4. The first three candidates were given appointment on regular basis. But the workman was appointed as Data Entry Operator Grade A on ad hoc basis for a period of 89 days vide order dated 20.7.2000 (Exhibit WW1/4). The term of appointment was extended from time to time vide order dated 17.11.2000 (Exhibit WW1/6), 31.1.2010 (Exhibit WW1/7); 5.5.2001 (Exhibit WW1/8); 13.8.2001 (Exhibit WW1/9); 15.9.2001 (Exhibit WW1/10). Management appointed Sh. Omkar Singh on 15.1.2002 and terminated his services. Now according to the workman, since he completed more than 240 days of service without any break, his services were not liable to be terminated without complying with the provisions of Section 25F of the Act. Therefore termination order is not sustainable. It is further pleaded that three candidates were given appointment letter on regular basis in pursuance of the interview held on 21.4.1999 and there was no reason to put the workman in the waiting list and to employ him on ad hoc basis. That the workman is entitled to be reinstated in service with all the benefits.

According to the management the workman was appointed only on ad hoc basis for 89 days or till such time the regular selection was made whichever was earlier and since a regular employee was appointed on 15.1.2002, his services were rightly terminated. It is further pleaded that five posts of Data Entry Operator Grade A was notified on 25.11.2000 and the workman appeared in the test but could not qualify the same and therefore he is not liable to be appointed on regular basis. That the management ordered to pay him retrenchment compensation and sent the letter through registered cover which was received with the report 'refused'. That the management has complied with the provisions of Section 25F of the Act.

Parties led their evidence.

Workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand management examined Pradeep Bhutani who filed his affidavit reiterating the case of the respondent management.

I have heard Sh. N.K. Nagar, counsel for the workman and Sh. N.K. Zakhmi, counsel for the management.

It was argued by the learned counsel for the workman that the workman continuously worked from 17.11.2000 to 15.1.2002 i.e. for more than 240 days and his services could not have been terminated without payment of retrenchment compensation as required under Section 25F of the Act and being so, the termination of the workman is illegal. He further argued that workman was selected by duly constituted Committee after test and there was no question of giving him appointment on ad hoc basis and therefore his appointment on ad hoc basis is also illegal.

On the other hand learned counsel for the management contended that while passing the order of termination, it was ordered to pay him retrenchment compensation and a notice was sent to him through registered cover to collect the same from the office but registered letter was received back undelivered and being so, there was sufficient compliance of the provisions of Section 25F of the Act. He has further contended that since the service of the workman was on contractual basis which automatically came to an end on the expiry of the contract and the termination of his service do not amount to 'retrenchment'.

I have considered the respective contentions of the learned counsels.

It is not denied that the workman appeared in a test for the post of Data Entry Operator Grade A in the year 1999 and after qualifying the test, he was interviewed by a duly constituted committee. But he was placed in the waiting list at serial No.4 and was given appointment only on ad hoc basis vide letter dated 20.7.2000 (Exhibit WW1/4). The question whether the action of the management in appointing him on ad hoc basis was legal or not, is not to be gone into by this Court, and it is to see only whether the termination of his services were legal and justified. Vide letter dated 20.7.2000 (Exhibit WW1/4) the workman was appointed for a period of 89 days only or till such time the regular selection is made whichever was earlier; and the ad hoc appointment was extended vide letter dated 17.11.2000 (Exhibit WW1/6) up to 31.12.2000 on the existing terms and conditions. Similarly an order dated 13.1.2001 (Exhibit WW1/7) and 5.5.2001 (Exhibit WW1/8), 13.8.2001 (Exhibit WW1/9) and 15.9.2001 (Exhibit WW1/10) were passed.

In the last letter dated 15.9.2001 the term was extended up to 30.11.2001 or till such time regular candidate was appointed. A bare perusal of the said letters make it quite clear that the workman was appointed for a fixed term and with a few stipulation that if any regular selection was made then also his services were to be terminated.

Respondent management terminated the services of the workman vide order dated 15.5.2002 (Exhibit R11) vide which the order issued vide endorsement No.F-552-E-II-PGI 2002 was superseded but the said order has not been placed on the record by both the parties. The said order dated 15.5.2002 (Exhibit R11) read as follow:-

In supersession to this office order issued under Endst No. F-552 EII(I)-PGI-2002, the services of Sh. Yash Pal Sharma, Data Entry Operator Grade-A (Ad Hoc) are hereby extended upto 15.5.2002. He will be paid salary upto 15.5.2002 and thereafter the ad hoc appointment shall come to an end automatically.

Sh. Yash Pal Sharma shall be paid one month's salary in lieu of short notice of termination of appointment as well as retrenchment compensation equivalent to one month's gross salary, which he shall collect from the cashier of the institute. On termination of adhoc appointment Sh. Yash Pal Sharma shall stand relieved w.e.f. 15.5.2002 (A/E).

Perusal of the said letter shows that on the one hand the services of Sh. Yash Pal Sharma (Ad Hoc) were extended and at the same time it was ordered that his services would come to an end. The said letter further prove that an order was passed for one month salary in lieu of short notice as well as retrenchment compensation with the direction to the workman to collect the same from the cashier.

Section 2(oo) defines 'retrenchment' and it read as follow:-

[(oo) "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include–

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;]

Thus the termination of the services of the workman as result of non-renewal of the contract on its expiry or of such contract being terminated under a stipulation in that behalf, do not amount to 'retrenchment'. In the appointment letters, as mentioned above, he was appointed for a fixed term with a further stipulation that if any regular selection was made then, his services would come to an end. It is not disputed that the respondent management again advertised 5 posts of Data Entry Operator in December 2000 and the workman also applied for the said posts, but he could not qualify the test. As a result of this selection 5 persons were selected and Sh. Omkar Singh was posted at the place where the present workman was working as clear from the copy of the order Exhibit W11. Thus a person appointed on regular basis joined on the post and in view of the stipulation contained in his appointment letters, he was to be relieved from his duties. Thus his appointment was upto 15.5.2002 and the same came to an end on the expiry of the said date as well a new incumbent joined in his place. Since his services were terminated as per stipulation in the letters vide which he was appointed, the same do not amount to 'retrenchment'.

Here, it was submitted by the learned counsel for the management that retrenchment compensation was ordered to be paid to the workman vide letter dated 15.5.2002 and even registered notice was sent to him and as such the condition prescribed in Section 25F of the Act for retrenchment compensation has been complied with. This contention is devoid of any force. A perusal of the said order dated 15.5.2002 as reproduced above shows that his services were terminated with the direction to the workman to collect the compensation from the cashier. It

is a settled law that the compliance of Section 25-F(a) and (b) is a condition precedent for retrenchment and in the present case, the only order was passed to pay him the compensation but the same was not paid and it cannot be said that the provisions of Section 25F has been complied with. In this respect reliance may be placed on Roop Narain Shukla Vs. Presiding Officer, Industrial Tribunal, Faridabad wherein it was observed in para 8 of the judgment as follows:-

> Thus, it would clearly appear that mere intimation to the workman that he should collect his dues from the office of any working day is not enough compliance with the provisions of Section 25-F(a) and (b) of the Industrial Disputes Act. In this case, I, therefore, hold that there was no compliance of 25-F of the Industrial Disputes Act.

Therefore, in the present case where only intimation was sent to the workman to collect his dues is not compliance of the provisions of the said Section. However in the present case, the termination of the services of the workman do not amount to retrenchment, as discussed above; and therefore, compensation was not liable to be paid.

In result, it is held, that termination of the services of the workman is legal and he is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1679.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी.पी.डब्ल्यू.डी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 818/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-42012/305/2003-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1679.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 818/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Central Public Works Department and their workmen, received by the Central Government on 30/05/2014.

[No. L-42012/305/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No.818/2005

Registered on 8.9.2005

1. The Zonal Secretary,
   All India CPWD (MRM)
   Karamchari Sanghathan (Regd)
   CPWD Store Building Sector 7B,
   Chandigarh.

2. Sh. Parveen Kumar,
   S/o Sh. Chandrika Prasad Rai,
   Khalasi, C/o All India, CPWD (MRM)
   Karamchari Sangathan (Regd.),
   through: Zonal Secretary,
   CPWD Store Building, Sector 7B,
   Chandigarh .....Petitioner

Versus

The Executive Engineer,
Central Public Works Department,
Chandigarh Central Electrical Division,
Kendriya Sadan, Sector 9A,
Chandigarh .....Respondents

APPEARANCES

For the workman : Sh. S.D. Sharma Adv.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on : 15-5-2014

Central Government vide Notification No. L-42012/305/2003-IR(CM-II) Dated 23.8.2004, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the contract between the management of CPWD and their contract is sham and the demand of All India CPWD (MRM) Karamchari Sangathan for regularization of the services of Sh. Praveen Kumar in the organization of CPWD is legal and justified? If yes, to what relief they are entitled?"

In response to the notice the claimants submitted statement of claim that claimant No.1 is a workman Union and claimant No.2 is its member. That claimant No.2 (hereinafter called the workman) was employed on contract labour system as Khalasi at Enquiry Office of CFSL Building, Sector 36, Chandigarh through M/s. Care Enterprises, Shop No.358, Industrial Area, Phase I,

Chandigarh w.e.f. 27.7.2002 by the management for attending the work which was perennial in nature and is still continuing at the said job. He worked under the direct control and supervision of the management. That the Ministry of Labour vide Notification No.690 dated 31.7.2002 abolished the employment of wireman, Khalasi etc. on contract in view of Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970. That the contract system entered into between the management and the contractor is a sham transaction and there is a direct relationship of principal employer and employee between the management and the workman. That there are vacant sanctioned posts for regularization of the services of the workman.

It is further pleaded that workman is entitled to equal pay for equal work and he was not paid wages as given to regular employees discharging the same duties. That he has completed more than 240 days in a year.

It is further pleaded that the regularization of his services against sanctioned post of Khalasi is unjust, unfair and illegal and he is entitled to regularization of his services as Khalasi.

Respondent management filed written statement denying the relationship and pleaded that workman was never engaged by the management and he was not paid anything by it. It entered into a contract with the contractor and the contractor may have deployed the persons for the performance of the job as per conditions of the contract. The department cannot verify whether the workman was actually engaged by the contractor. Management paid the amount under the agreement to the contractor who in turn paid the wages to the persons engaged by him. It is specifically denied that the workman was employed as a khalasi. Since the workman was not engaged by the respondent management, there is no relationship of master and servant between the parties. That the contract entered into between the respondent management and the contractor is not a sham transaction.

In the rejoinder the workman reiterated his case as set out in the claim petition and further pleaded that he is under the control, supervision and authority of the respondent management.

Parties led their evidence.

The workman examined Sh. L.D. Gera, Bunny Singh and himself appeared in the witness box.

Workman filed his affidavit reiterating the case as set out in the claim petition.

He has placed on record photocopy of the logbook Mark WW1/2 to Mark WW1/28.

Sh. L.D. Gera is a Junior Engineer of the respondent management and identified his signature on certain pages of the said logbook and further deposed that workman worked under him and was engaged by the contractor.

Bunny Singh filed his affidavit deposing that workman worked as Khalasi with the respondent management.

On the other hand the management has examined Sh. R.K. Gupta, XEN who filed his affidavit reiterating the case of the management as set out in the written statement.

I have heard Sh. S.D. Sharma, counsel for the workman and Sh. Anish Babbar, counsel for the management and have gone through the file carefully.

The only contention raised by the learned counsel at the time of arguments is that workman is actually an employee of the respondent management and the contract system is a camouflage to avoid the implications of the labour laws and since the workman is an employee of the management, his services are to be regularized.

The first question to be seen is whether the workman is a direct employee of the management? The workman himself has pleaded that he was employed on contract labour system and as such he cannot claim himself to be an employee of the management. There is nothing on the file to suggest that the contract entered into between the management and the contractor was a sham transaction.

In Ram Singh and others Vs. Union Territory Chandigarh and others reported in (2004) 1 SCC it was observed by Hon'ble Apex Court in para 15 and 16 of the judgment as follows

> (15) In determining the relationship of employer and employee no doubt control is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole test of control. An integrated approach is needed. Integration test is one of the relevant tests. It is applied by examining whether the persons was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organize the work, supply tools and materials and what are the mutual obligations between them.
>
> (16) Normally, the relationship of employer and employee does not exist between an employer and a contractor and the servant of an independent contractor. Where, however an employer retains or assumes control over the means and method by which the work of a contractor is to be done, it may be said that the relationship between employer and employee exists between him and the servants of

such a contractor. In such a situation the mere fact of formal employment by an independent contractor will not relieve the master of liability where the servant is in fact, in his employment. In that event it may be held that an independent contractor is created or is operating as a subterfuge and the employee will be regarded as the servant of the principal employer. Whether a particular relationship between employer and employee is genuine or a camouflage through the mode of a contractor, is essentially a question of fact to be determined on the basis of the features of the relationship, the written terms of employment, if any, and the actual nature of the employment. The actual nature of relationship concerning a particular employment being essentially a question of fact it has to be raised and proved before an industrial adjudicator.

Thus, the workman has to prove that he used to receive remuneration from the respondent management who has the power to select and dismiss him and there were any mutual obligations and these facts are not proved on the file and it cannot be said that contract is a sham transaction. If he worked under the supervision of the management as deposed by L.D. Gera, that fact is not sufficient to hold that he was an employee of the management.

The second question is that even if there was a relationship of employer and employee between the management and workman, whether workman is entitled to regularization of his services.

In the latest pronouncement Secretary, State of Karnataka Vs. Uma Devi reported in A.I.R. 2006 S.C. 1806, the Hon'ble Apex Court observed that employees who were not appointed by observing the regular procedure and rules are not entitled to regularization of their services. The Hon'ble Apex Court observed in para 1 of the judgment as follows:-

Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

It was further observed in para 5 of the judgment as follow:-

The power of a state as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily. Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. The article contemplates the drawing up of a procedure and rules to regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment and for services of controlled by detailed procedures which specify the necessary qualifications, the mode of appointment etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules.

The Hon'ble Apex Court further observed in para 34 of the judgment as follows:-

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our constitution and since the rule of law is the core of our constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the constitution. Therefore, consistent with the scheme for public employment, this court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, appointment comes to an end at the end of the contract, if it were an engagement of appointment on daily wages or casual basis; the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period employment has come to an end or of ad hoc employee who by the very nature of their appointment, do not acquire any right. High Courts acting under article 226 of the constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an

employee had continued under cover of an order of court, which we have described as litigious employment in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the state the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the state or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandate.

Thus, an employee who is not appointed as per terms of the relevant rules and regulations, his services cannot be regularized. Since it is the case of the workman himself that he was employed through a contractor and not as per any rules and regulations of the department, the department was not required to regularize his services and it cannot be held that he is entitled to regularization of his services as claimed by him.

Thus, it is not proved that there was a relationship of employer and employee between the workman and the respondent management and he is not entitled to regularization of the services and accordingly the reference is answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1680.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी.पी.डब्ल्यू.डी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 70/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-42012/86/2003-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1680.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Central Public Works Department and their workmen, received by the Central Government on 30/05/2014.

[No. L-42012/86/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 70/2004

Registered on 17.3.2005

1. The Zonal Secretary,
   All India CPWD (MRM)
   Karamchari Sanghathan (Regd)
   CPWD Store Building Sector 7B,
   Chandigarh

2. Sh. Kala Singh,
   S/o Sh. Hakam Singh,
   office of the Executive Engineer,
   Central Electrical Division, CPWD,
   Chandigarh Kendriya Sadan,
   3rd Floor, Sector 9A,
   Chandigarh C/o All India CPWD (MRM)
   Karamchari Sangathan (Regd)
   through Zonal Secretary,
   CPWD Store Building,
   Sector 7B, Chandigarh .....Petitioner

Versus

The Executive Engineer,
Central Public Works Department,
Chandigarh Central Electrical Division,
Kendriya Sadan,
Sector 9A, Chandigarh .....Respondent

APPEARANCES :

For the workman : Sh. S.D. Sharma Adv.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on-15.5.2014

Central Government vide Notification No. L-42012/86/2003 IR(CM-II)) Dated 25.2.2005, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of CPWD, Chandigarh in not regularizing the services of Sh. Kala Singh, Electrical Khalasi, w.e.f. 3.2.98 is legal and justified? If not, to what relief the concerned workman is entitled?"

In response to the notice, the claimants submitted statement of claim and pleaded that claimant No.1 is the workmen Union and claimant No.2 (hereinafter called the workman) is its member. That the workman was employed as Khalasi through contractor w.e.f. 3.2.1998. It is pleaded that though he was engaged through a contractor but he discharged his functions under the complete control of the management and the contract was entered into just to deprive him the benefits of labour laws and the contract is a sham transaction. That there is a direct relationship of principal employer and employee between the management and the workman and he is entitled to regularization of his services. That the Ministry of Labour vide Notification No.690 dated 31.7.2002 abolished the employment of Khalasi etc. on contract in view of Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970. It is further pleaded that he discharged the same functions as are being discharged by the regular employees and he is entitled to more pay on the principle of equal pay for equal work.

The workman has prayed that the act of the management in not regularizing his services is unjust and illegal and he is entitled to regularization of his service against the sanctioned vacant post of Khalasi and with more pay on the principle of 'equal pay for equal work'.

Respondent management filed written statement denying the relationship and pleaded that workman was never engaged by the management and he was not paid anything by it. It entered into a contract with the contractor and the contractor may have deployed the persons for the performance of the job as per conditions of the contract. The department cannot verify whether the workman was actually engaged by the contractor. Management paid the amount under the agreement to the contractor who in turn paid the wages to the persons engaged by him. It is specifically denied that the workman was employed as a khalasi. Since the workman was not engaged by the respondent management, there is no relationship of master and servant between the parties. That the contract entered into between the respondent management and the contractor is not a sham transaction.

Parties led their evidence.

In support of his case the workman appeared in the witness box and examined Subhash Chander.

Workman has filed his affidavit reiterating the case as set out in the claim petition.

Subhash Chander has stated that workman has been working with the respondent management w.e.f. 3.2.1998.

On the other hand the management examined Sh. R.K. Gupta who filed his affidavit reiterating the case of the respondent management as set out in the written statement.

I have heard Sh. S.D. Sharma, counsel for the workman and Sh. Anish Babbar, counsel for the management and have gone through the file carefully.

It was contended by the learned counsel for the workman that the workman work under the control and supervision of the officers of the department and there is a direct relationship of principal employer and employee between the parties and the contract entered into to engage the workman is a sham transaction and the workman is entitled to regularization of his services.

I have considered the contention of the learned counsel.

If it is taken that the workman work under the control and supervision of the officers of the respondent department, this sole fact is not sufficient to prove that there is a relationship of principal employer and employee between the parties. Nothing has come on the file that respondent management paid remunerations to the workman and has the power to select and dismiss him. No mutual obligations are proved on the file and in the circumstances it cannot be said that there was any relationship of principal employer and employee between the parties.

The Hon'ble Supreme Court in its latest pronouncement in Secretary, State of Karnataka Vs. Uma Devi reported in A.I.R. 2006 S.C. 1806, observed that employees who were not appointed by observing the regular procedure and rules are not entitled to regularization of their services. The Hon'ble Apex Court observed in para 1 of the judgment as follows:-

> Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

It was further observed in para 5 of the judgment as follow:-

> The power of a state as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily. Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. The article contemplates the drawing up of a procedure and rules to regulate the service

conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment and for services of controlled by detailed procedures which specify the necessary qualifications, the mode of appointment etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules.

The Hon'ble Apex Court further observed in para 34 of the judgment as follows:-

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our constitution and since the rule of law is the core of our constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the constitution. Therefore, consistent with the scheme for public employment, this court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, appointment comes to an end at the end of the contract, if it were an engagement of appointment on daily wages or casual basis; the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period employment has come to an end or of ad hoc employee who by the very nature of their appointment, do not acquire any right. High Courts acting under article 226 of the constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of court, which we have described as litigious employment in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the state the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the state or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandate.

Thus, an employee who is not appointed as per terms of the relevant rules and regulations, his services cannot be regularized. Since it is the case of the workman himself that he was employed through a contractor and not as per any rules and regulations of the department, the department was not required to regularize his services and it cannot be held that he is entitled to regularization of his services as claimed by him.

Thus, it is not proved that there was a relationship of employer and employee between the workman and the respondent management and he is not entitled to regularization of the services and accordingly the reference is answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 मई, 2014

का.आ. 1681.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखन्नी के पंचाट (संदर्भ संख्या 38/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-22013/1/2014-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1681.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Indus.Tribunal-cum-Labour Court, Godavarikhani (IT/ID/38/2011) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 30.05.2014.

[No. L-22013/1/2014-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DISTRICT & SESSIONS COURT, GODAVARIKHANI

Present : SRI G. V. KRISHNAIAH, Chairman-cum-Presiding Officer, Godavarikhani

Tuesday, the 15th Day of April, 2014.

Industrial Dispute No. 38 of 2011.

Between :

Jangapalli Ravinder,
S/o. Ankus, Age: 36 years,
Occ : Ex-Badili Filler, E.C. No. 2902169,
IK-1 Incline, Srirampur Area, H.No.6-5-487,
Power House Colony,
Godavarikhani .....Petitioner

And

Director (PA & W),
Corporate Office,
SCCL, Kothagudem,
District : Khammam .....Respondent.

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri G. Ramesh, Advocate, for the petitioner and Sri D.Krishnamurthy, Advocate, for the respondent, and the matter having stood over before me for consideration till this date, the Court passed the following :—

AWARD

1. This petition under Sec.2 – A(2) of I.D. Act is filed challenging the dismissal of the petitioner on the ground of habitual absence.

The allegations in the petition are as follows:-

2. Petitioner served in the respondent company from 1997 to 2002. His attendance is as follows:

1997	-	99 musters
1998	-	132 musters
1999	-	102 musters
2000	-	110 musters
2001	-	172 musters
2002	-	103 musters

3. In the year 2002, petitioner suffered from Enteric Fever and Hepatitis and took treatment in Raginedu Government Hospital from 28.11.2002 to 05.04.2003. He was advised rest subsequently also. Petitioner came to know that he was dismissed from service vide order dated 01.06.2004. The punishment given to the petitioner is harsh and unjustified. Therefore, the petitioner may be reinstated into service as Badili Filler with continuity of service, consequential attendant benefits and full back wages.

4. Respondent filed counter stating that since the year 2000 petitioner has not been attending his duties as Badili Filler. The following is the attendance of the petitioner from the year 2000 to 2004.

2000	-	110 musters
2001	-	190 musters
2002	-	111 musters
2003	-	45 musters (upto October, 2003)
2004	-	Nil

On this ground petitioner was dismissed from service after conducting departmental enquiry. Petitioner received some of the terminal benefits and an amount of Rs.5,573/- is due from the petitioner towards repayment of Festival Advance, Strike Advance, IA recovery and interest of RBPS 2% for pension. It is also contended that the petitioner did not take treatment from any of the Company Hospitals at Ramagundam, Ramakrishnapur, Bellampalli and Kothagudem. Since respondent is a Government Company and mining industry being a central subject. Industrial Tribunal cum Labour Court, Hyderabad alone is having jurisdiction.

5. During the course of enquiry, memo under Sec.11-A of I.D. Act is filed by the petitioner that he is not questioning the procedure in the enquiry. Ex.W-1 to W-8 and Ex.M-1 to M-10 are marked.

6. Now the point for consideration is:

"Whether the order of dismissal of the petitioner is justified?"

7. Most of the facts are admitted i.e., petitioner's appointment as Badili Filler, number of days he worked, enquiry being conducted against the petitioner and order of dismissal. In fact as per Ex.M-6, petitioner under took at least 20 musters per month. Petitioner failed to put in the requisite musters. Ultimately enquiry was conducted on 04.10.2003 at 09.00 am.

8. The explanation of the petitioner i.e., suffered from ill health was not made out in the enquiry and now such an explanation cannot be considered at this stage. Admittedly, petitioner did not take treatment in any of the hospitals maintained by the respondent company. Therefore, it has to be taken that petitioner was habitually absent from duties. Now the question of punishment has to be examined. The misconduct alleged against the petitioner does not involve moral turpitude. Therefore, the punishment of dismissal from service is not justified. In a decision reported in DIVISION BENCH JUDGMENT OF GUJARATH HIGH COURT REPORTED IN 1982 LAB.IC.1031 BETWEEN: R.M., PARMAR VRS., GUJARATH ELECTRICITY BOARD, Justice Thakkar as

he then was pointed out the following impracticalities inherent in the order of the dismissal.

Guidelines laid down in the mater of inflicting punishment of discharge and dismissal:-

1. In a disciplinary proceeding for an alleged fault of an employee, punishment is imposed not in order to seek retribution or to give vent to feelings of wrath.
2. The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out of warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.
3. It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. It would be counter-productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.
4. In order not to attract the charge of arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.
5. When different categories of penalties can be imposed in respect of the alleged fault, one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalty available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned, it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardizing the interest of the employees the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask the inner voice and rational faculty why a lesser penalty cannot be imposed.
6. It cannot be over looked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the court and avail the costly time-consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.
7. When the disciplinary proceedings end in favour of the employee, the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because the extreme penalty of dismissal or removal is imposed instead of a lighter one.
8. Every harsh order of removal from service creates bitterness and arouses feeling of antagonism in the collective mind of the workers and gives raise to a feeling of class conflict. It does more harm than good to the employer as also to the society.
9. Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly, when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instances, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity (and even tax evasion or possession of black money is not considered to be dishonorable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passed under the name of kleptomania when committed by the rich.
10. In the result, the order of dismissal dated 22.05.2004 marked as Ext.M-10 is set aside and the respondents' company is hereby directed to reinstate the petitioner into service as "Afresh Badili Filler" and he shall be subjected to medical test for the post. The petitioner is not entitled to any back wages, continuity of service and any other attendant benefits.

Typed to my dictation, corrected and pronounced by me in the open court on this the 15th day of April, 2014.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman	For Management
-Nil-	-Nil-

EXHIBITS

For workman :—

Ex.W-1	Dt.	25-01-1997	Office order (appointment order as Badli Filler), x.copy.
Ex.W-2	Dt.	02-05-2003	Charge sheet. X.copy
Ex.W-3	Dt.	05-04-2003	Medical certificate. X. copy
Ex.W-4	Dt.	22-05-2004 05-06-2004	Dismissal order along with office orders, x.copy.
Ex.W-5	Dt.	13-04-2011	Demand notice
Ex.W-6	Dt.	13-04-2011	Postal receipt.
Ex.W-7	Dt.	12-04-2005	Interview call letter
Ex.W-7	Dt.	08-04-2011	Un-delivered postal returned cover with Ack.,

For Management :—

Ex.M-1	Dt.	02-05-2003	Charge sheet. X.copy
Ex.M-2	Dt.	03-05-2003	Ack., to Charge sheet. X.copy
Ex.M-3	Dt.	04/5-08-2003	Enquiry notice, x.copy
Ex.M-4	Dt.	27-08-2003	Enquiry notice, o/copy
Ex.M-5	Dt.	24-09-2003	Enquiry notice published in Andhra Jyothi Daily Newspaper. X.copy.
Ex.M-6	Dt.	29-09-2003	Undertaking given by the petitioner during the counseling
Ex.M-7	Dt.	04-10-2003	Enquiry proceedings
Ex.M-8	Dt.	15-10-2003	Enquiry report
Ex.M-9	Dt.	27-10-2003	Show cause notice
Ex.M-10	Dt.	00-04-2004 22-05-2004	Office order (dismissal order).

नई दिल्ली, 30 मई, 2014

का.आ. 1682.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखन्नी के पंचाट (संदर्भ संख्या 24/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-22013/1/2014-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1682.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Indus.Tribunal-cum-Labour Court, Godavarikhani (IT/ID/ 24/2012) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 30.05.2014.

[No. L-22013/1/2014-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DISTRICT & SESSIONS COURT, GODAVARIKHANI

Present : SRI G.V. KRISHNAIAH, Chairman-cum-Presiding Officer

Monday, the 7th Day of April, 2014

Industrial Dispute No. 24 of 2012

Between:-

Lingampalli Ravi Kumar,
S/o.Venkati, Ex-Coal Filler,
E.C. No. 2373352,
Aged about 35 years,
Qr. No. ND-799, Nagarjuna Colony,
Ramakrishnapur, Adilabad District .....Petitioner

And

1. The Dy. General Manager,
I K-1A Incline, S.C.Co. Ltd.,
Mandamarri Area, District: Adilabad.

2. The General Manager,
Mandamarri Area, S.C.Co. Ltd.,
District: Adilabad.

3. The Chairman & Managing Director,
S.C.Co. Ltd., P. O : Kothagudem,
District : Khammam (A.P.) .....Respondents

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri K. Sudhakar Reddy, Advocate, for the petitioner and Sri D. Krishnamurthy Advocate, for the respondents, and the matter having stood over before me for consideration till this date, the Court passed the following:-

AWARD

1. The petitioner who worked as Coal Filler in the Singareni Collieries Company Limited seeks his reinstatement by setting aside the dismissal order dated 16-10-2011 with continuity of service, all other consequential attendant benefits and full back wages.

2. The allegations in the petition are as follows:-

According to the petitioner, he was appointed as Badli Coal Filler in the year 2007 under dependent employment scheme in place of his deceased father. Ever since the date of his appointment, the petitioner was discharging his duties to the utmost satisfaction of the company authorities. He belongs to SC community and hails from a very poor family. He successfully completed required musters during the probation period for confirmation as Coal filler and he attended to his duties promptly and regularly. He had put in more than the required physical musters every year from 2007 and 2008 more than 100 physical musters. During the year 2009 and 2010, the petitioner was compelled to look after his mother who was given prolonged treatment for his illness. The petitioner put in 58 musters in the year 2009, and 57 musters in the year 2010 due to his mother's ill-health and also his ill-health. As such in the year 2009 & 2010 he could not attend to his duties regularly as he was forced to stay in the hospitals for long spells frequently to look after his mother. The 1st respondent without considering the true facts and ill-health condition of the petitioner in the year 2011, issued charge sheet under company's standing order No. 25.25 alleging that:-

"For your habitual late absence or habitual absence from duty without sufficient cause during the year 2010".

3. The respondents failed to give any family counseling and observation period to the petitioner after the domestic enquiry conducted on 28-01-2011 which is against to the circulars and MOS of the company. The 2nd respondent without considering the genuine ill-health of the petitioner and his mother, dismissed him from service. The domestic enquiry was not conducted fairly and properly by the respondents and the findings of the enquiry officer are highly perverse, biased and he was dismissed from Service by order dated 16-10-2011, unjustly. Therefore, he prays to allow the petition granting full back wages.

4. R-2 filed counter which was adopted by R-1 and R-3. The main points raised in the counter are regarding the lack of jurisdiction of this Tribunal since the respondents management is a Central Government Company and that there was poor attendance of the petitioner from 2007 (107) musters in the year 2008, (101) musters in the year 2009 (58) and in the year 2010, (57) musters and that therefore charges were framed under Sec. 25(25) of standing orders of the company:-

"Habitual late attendance or habitual absence from duty without sufficient cause".

5. The petitioner received charge sheet and submitted his explanation. The petitioner attended the enquiry on 28-01-2011 and admitted the charges levelled against him in the charge sheet and participated in the enquiry. The petitioner was called for counseling by the respondents company on 12-05-2011, but the petitioner failed to attend the counseling. The respondents company conducted the enquiry fairly following the principles of natural justice and after taking the previous record of the petitioner and his performance during the observation period into consideration, was constrained to dismiss the petitioner from service. Therefore, punishment of dismissal was imposed with effect from 31-10-2011 as per order dated 16-10-2011. Habitual absenteeism adversely impacts the performance of the company, which is engaged in the mining activities and therefore, petition may be dismissed.

6. Heard both sides. The respondents have filed written arguments also. Though the petitioner contended that the departmental enquiry was not conducted fairly and properly, subsequently memo was filed U/Sec. 11-A of I.D. Act conceding the validity of the departmental enquiry. As such, it is not in dispute.

7. The consideration of respective contentions of the parties the following points required to be determined:-

1. "Whether this Tribunal has got jurisdiction?"
2. "Whether the punishment of dismissal of the petitioner is justified and proportionate?"

8. POINT No : 1

As per the Judgment of the Hon'ble High Court reported in 1997 (III) LLJ (Supp.) 11 between U. Chinnappa And Cotton Corporation of India, this Court has got jurisdiction to entertain the dispute raised by the petitioner. Hence, the point is accordingly answered in favour of the petitioner.

9. POINT No : 2.

The petitioner gave reply to the charge sheet which is marked as Ex.M-2. He pleaded that due to ill-health of his mother and could put in only (57) musters during the year 2009. As per the enquiry statement of the petitioner at page No.6 under Ex.M-4, the petitioner reiterated the same defence. He admitted that from January, 2010 to December, 2010, he absented to duties for total (290) days. He did not produce any medical treatment slips/reports during departmental enquiry.

10. In a decision reported in DIVISION BENCH JUDGMENT OF GUJARATH HIGH COURT REPORTED IN 1982 LAB.IC.1031 BETWEEN: R.M., PARMAR VRS., GUJARATH ELECTRICITY BOARD, the following practicalities were pointed out in the matter of inflicting punishment of discharge and dismissal:-

1. In a disciplinary proceeding for an alleged fault of an employee, punishment is imposed not in order to seek retribution or to give vent to feelings of wrath.
2. The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out of warning to the

other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.

3. It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. It would be counter-productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.

4. In order not to attract the charge of arbitrariness, it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.

5. When different categories of penalties can be imposed in respect of the alleged fault, one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalty available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned, it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardizing the interest of the employees the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask the inner voice and rational faculty why a lesser penalty cannot be imposed.

6. It cannot be over looked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the court and avail the costly time-consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.

7. When the disciplinary proceedings end in favour of the employee, the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because the extreme penalty of dismissal or removal is imposed instead of a lighter one.

8. Every harsh order of removal from service creates bitterness and arouses feeling of antagonism in the collective mind of the workers and gives raise to a feeling of class conflict. It does more harm than good to the employer as also to the society.

9. Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly, when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instances, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity (and even tax evasion or possession of black money is not considered to be dishonorable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passed under the name of kleptomania when committed by the rich.

11. Admittedly the respondent company has not issued show cause notice, prior to imposing the punishment of dismissal from service. There is no moral turpitude on the part of the petitioner. However, he failed to produce any documentary evidence to substantiate his defence for the absented period. Under these circumstances, I hold that dismissal of the petitioner from service is not justified and disproportionate. I further hold that denial of entire back wages and continuity of service will be sufficient punishment to the petitioner; and ordering for his reinstatement as "Afresh Badli Filler", would meet the ends of justice.

12. In the result, the order of dismissal dt.16-10-2011 marked as Ex.M-10 is set aside and the respondents are directed to reinstate the petitioner into service as "Afresh Badli Filler" and he shall be subjected to medical test for the post. The petitioner is not entitled to any back wages, continuity of service and any other attendant benefits.

Typed to my dictation, corrected and pronounced by me in the open court on this the 7th day of April, 2014.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman	For Management
-Nil-	-Nil-

EXHIBITS

For workman :—

Ex.W-1	Dt. 16-10-2011	Dismissal order.
Ex.W-2	Dt. 21-07-2011	Letter issued to the petitioner calling comments on enquiry report with charge sheet, x.copy
Ex.W-3	Dt. 01-11-2012	Demand Notice
Ex.W-4	Dt. 03-11-2012	Postal Ack., of respondent
Ex.W-5	Dt. 30-08-2009	Medical certificate issued by Sri Dr. B. Rajam.
Ex.W-6	Dt. 25-10-2010	Medical certificate issued by Sri Dr. B. Rajam.
Ex.W-7	Dt. 20-01-2011	Representation of petitioner, x.copy.

For Management :—

Ex.M-1	Dt. 10-01-2011	Charge sheet.
Ex.M-2	Dt. 20-01-2011	Representation of petitioner.
Ex.M-3	Dt. 24-01-2011	Enquiry memo
Ex.M-4	Dt. 28-01-2011	Enquiry proceedings
Ex.M-5	Dt. —	Enquiry report
Ex.M-6	Dt. 30-05-2011	Counseling letter issued to petitioner.
Ex.M-7	Dt. 09-06-2011	Acknowledgement
Ex.M-8	Dt. 07-07-2011	Counseling of absenteeism of petitioner's observation period letter.
Ex.M-9	Dt. 21-07-2011	Letter issued to the petitioner calling comments in E.O., report with Ack.,
Ex.M-10	Dt. 16-11-2011	Dismissal order.

नई दिल्ली, 30 मई, 2014

का.आ. 1683.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखन्नी के पंचाट (संदर्भ संख्या 36/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था।

[सं. एल-22013/1/2014-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1683.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Indus.Tribunal-cum-Labour Court, Godavarikhani (IT/ID/36/2008) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 30.05.2014.

[No. L-22013/1/2014-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DISTRICT & SESSIONS COURT, GODAVARIKHANI.

Present : SRI G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

Thursday, the 3rd Day of April, 2014.

Industrial Dispute No. 36 of 2008

Between :

Sk. Jaffer, Ex-Coal Filler,
E.C. No. 2892259,
S/o. Tarmiya, Aged about 40 years,
Qr. No. ST 2-370, Bus Stand Colony,
P.O. Godavarikhani,
District : Karimnagar – 505 209 .....Petitioner/Workman.

And

1. The Supdt. of Mines, S.C.Co. Ltd.,
   Chennur – 2 Incline (now closed),
   Represented by its Project Officer,
   S.C. Co. Ltd., IK & CHR. Mines,
   P.O. Srirampur, District: Adilabad.
2. The Project Officer,
   IK & CHR. Mines,
   P.O. Srirampur, District : Adilabad.
3. The Chairman & Managing Director,
   S.C.Co. Ltd., P.O: Kothagudem,
   District: Khammam (A.P.)

— Respondents/Management.

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri B.Amarender Rao, Advocate, for the petitioner and Sri D. Krishnamurthy Advocate, for the respondents, and the matter having stood over before me for consideration till this date, the Court passed the following :—

AWARD

1. The petitioner who worked as Coal Filler in the Singareni Collieries Company Limited seeks his reinstatement by setting aside the dismissal order dated 26.7.2005.

2. The allegations in the petition are as follows:-

According to the petitioner, he had put in about (200) musters in the year 2000. He was transferred from IK 1- Incline to Chennur – 2 Incline in June, 2001. The water and atmosphere of Chennur – 2 Incline did not suit his health and he suffered frequent fever and joint pains. He was imparted medical treatment. He put in (91) musters in 2001, (71) musters in 2002 and (88) musters in 2003. He submitted medical certificates to the respondents'-company. Due to severe ill-health, he had put-in less musters, which was not considered by the respondents. The departmental enquiry was not conducted fairly and properly and he was dismissed from Service by order dated 26.7.2005, unjustly. Therefore, he prays to allow the petition granting full back wages.

3. R-2 filed counter which was adopted by R-1 and R-3. The main points raised in the counter are regarding the lack of jurisdiction of this Tribunal since the respondents management is a Central Government Company and that there was poor attendance of the petitioner from 2001 to 2003 i.e., (91) musters in the year 2001, (71) musters in the year 2002 and (88) musters in the year 2003, and that therefore charges were framed under Sec. 25(25) of standing orders of the company:-

> "Habitual late attendance or habitual absent from duty without sufficient cause & put in only (33) musters during the year 2003".

4. The petitioner received charge sheet, but failed to submit explanation and therefore respondent conducted enquiry on 01.06.2004 with due notice to the petitioner. The petitioner attended the enquiry and admitted the charges. He pleaded that he met with accident in December 2002 outside and got fracture to his right hand finger and absent for duties from 11-12-2002 to 15-2-2003. He produced fit certificate issued by the company in support of his above statement. Except this, he did not submit any documentary evidence for his un-authorised absenteeism during the whole year 2003. The petitioner was issued show cause notice dt.30-10-2004 along with the copies of the enquiry proceedings but the petitioner is not available in his residential address. Therefore, show cause notice was published in Andhra Jyothi Telugu News daily paper dated 22-5-2005 but the petitioner failed to approach the respondent company. Therefore, punishment of dismissal was imposed with effect from 01.08.2005 as per order dated 26.07.2005. That habitual absenteeism adversely impacts the performance of the company, which is engaged in the mining activities and therefore, petition may be dismissed.

5. Heard both sides. The respondents have filed written arguments also. Though the petitioner contended that the departmental enquiry was not conducted fairly and properly, subsequently memo was filed U/Sec.11-A of I.D., Act conceding the validity of the departmental enquiry. As such, it is not in dispute.

6. The consideration of respective contentions of the parties the following points required to be determined:-

1. "Whether this Tribunal has got jurisdiction?"
2. "Whether the punishment of dismissal of the petitioner is justified and proportionate?"

7. POINT No : 1

As per the Judgment of the Hon'ble High Court reported in 1997 (III) LLJ (Supp.) 11 between U. Chinnappa And Cotton Corporation of India, this Court has got jurisdiction to entertain the dispute raised by the petitioner. Hence, the point is accordingly answered in favour of the petitioner.

8. POINT NO. 2

The petitioner did not give any reply to the charges levelled against him. As per the charge sheet marked as Ex.M-1, he was absent for 11 days in February, 2003, 4 days in March, 2003, 5 days in April, 2003, 2 days in May, 2003 and 2 days in November, 2003. The respondents have admitted in their counter that the petitioner produced fit certificate issued by the respondents' company hospital for the period from 11-12-2002 to 15-2-2003, stating that he met with an accident out side and got fractured to his right hand finger. As per the enquiry statement of the petitioner at page No.4 under Ex.M-3 and report of the enquiry officer at page No.2 under Ex.M-4, the above defence of the petitioner is corroborated. Hence, for this period from 11-12-2002 to 15-2-2003, the petitioner produced evidence to justify his absence from duties.

9. In a decision reported in DIVISION BENCH JUDGMENT OF GUJARAT HIGH COURT REPORTED IN 1982 LAB.IC.1031 BETWEEN: R.M., PARMAR VRS., GUJARATH ELECTRICITY BOARD, the following guide lines were laid down in the mater of inflicting punishment of discharge and dismissal:—

1. In a disciplinary proceeding for an alleged fault of an employee, punishment is imposed not in order to seek retribution or to give vent to feelings of wrath.
2. The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out of warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.
3. It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. It would be counter-productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.

4. In order not to attract the charge of arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.

5. When different categories of penalties can be imposed in respect of the alleged fault, one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalty available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned, it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardizing the interest of the employees the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask the inner voice and rational faculty why a lesser penalty cannot be imposed.

6. It cannot be over looked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the court and avail the costly time-consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.

7. When the disciplinary proceedings end in favour of the employee, the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because the extreme penalty of dismissal or removal is imposed instead of a lighter one.

8. Every harsh order of removal from service creates bitterness and arouses feeling of antagonism in the collective mind of the workers and gives raise to a feeling of class conflict. It does more harm than good to the employer as also to the society.

9. Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly, when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instances, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity (and even tax evasion or possession of black money is not considered to be dishonorable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passed under the name of kleptomania when committed by the rich.

10. Under these circumstances considering the fact that the petitioner produced medical certificate for the period from 11-12-2002 to 15-2-2003 and his performance during the charge sheeted months of February, 2003 to June, 2003 and November, 2003 during which the number of absented days is less, I hold that dismissal of the petitioner from service is not justified and disproportionate. I further hold that denial of entire back wages and entire service of the petitioner will be sufficient punishment and ordering for his reinstatement as "Afresh Badli Filler", would meet the ends of justice.

11. In the result, the order of dismissal dt.26-07-2005 marked as Ex.M-9 is set aside and the respondents are directed to reinstate the petitioner into service as "Afresh Badli Filler" and he shall be subjected to medical test for the post. The petitioner is not entitled to any back wages, continuity of service and any other attendant benefits.

Typed to my dictation, corrected and pronounced by me in the open court on this the 3rd day of April, 2014.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman	For Management:-
-Nil-	-Nil-

EXHIBITS

For workman:-

Ex.W-1	Dt.	01-112-2001	Office order (Coal filler promotion letter)
Ex.W-2	Dt.	226-06-2001	Relieving order
Ex.W-3	Dt.	25-05-2004	Charge sheet.
Ex.W-4	Dt.	26-07-2005	Dismissal order.
Ex.W-5	Dt.	27-07-2007	Demand letter

Ex.W-6	Dt.	31-07-2007	Postal Ack., card of project officer of R-2
Ex.W-7	Dt.	30-07-2007	Un-delivered postal returned cover of R-1 with Ack.,

For Management:-

Ex.M-1	Dt.	25-05-2004	Charge sheet
Ex.M-2	Dt.	31-05-2004	Enquiry notice
Ex.M-3	Dt.	01-06-2004	Enquiry proceedings
Ex.M-4	Dt.	25-09-2004	Enquiry report
Ex.M-5	Dt.	30-10-2004	Show cause notice
Ex.M-6	Dt.	28-02-2005	Un-delivered returned postal cover with Ack.
Ex.M-7	Dt.	22-05-2005	Show-cause notice published in Andhra Jyothi Telugu Daily Newspaper
Ex.M-8	Dt.	26-07-2005	Dismissal order.

नई दिल्ली, 30 मई, 2014

का.आ. 1684.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय गोदावरीखन्नी के पंचाट (संदर्भ संख्या 37/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/5/2014 को प्राप्त हुआ था ।

[सं. एल-22013/1/2014-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th May, 2014

S.O. 1684.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Indus.Tribunal-cum-Labour Court, Godavarikhani (IT/ID/37/2011) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 30.05.2014.

[No. L-22013/1/2014-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DISTRICT & SESSIONS COURT, GODAVARIKHANI

Present : SRI G.V. KRISHNAIAH, Chariman-cum-Presiding Officer

Thursday, The 1st Day of May, 2014

Industrial Dispute No. 37 of 2011

Between :—

G. Mukund Reddy S/o. Sai Reddy,
Age 50 years, Occ : Coal Filler,
R/o. Regadi Maddikunta Mandal Odela,
District Karimnagar .....Petitioner/Workman

And

1. The Chief General Manager,
SC Company Ltd., RG-I,
Godavarikhani, Post : Godavarikhani,
Dist: Adilabad (A.P.)

2. The Managing Director (Administration),
S.C.Co. Ltd., P.O: Kothagudem,
District : Khammam
(A.P.) .....Respondents/Management.

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri S.Bhagavantha Rao, Advocate, for the petitioner and Sri D . Krishnamurthy, Advocate, for the respondents, and the matter having stood over before me for consideration till this date, the Court passed the following :—

AWARD

1. This petition is filed by Coal Filler of Singareni Company Limited challenging his dismissal from service.

The allegations in the petition are as follows:-

2. It is stated that the petitioner was appointed as an employee on 21-10-1983 and the petitioner discharged his duties to the fullest satisfaction of superiors till up to dismissal from service i.e., on 2-5-2010 which was effected on 5-5-2010 and he has put in 29 years of qualified length of service and his services are governed by various standing orders of company.

3. Most of his juniors engaged VRS GHS and VRS Scheme and drawn more than 10 Lakhs as compensation and the company terminated the services on VRS, GHS who have put in 23 years of service and the petitioner is admittedly an employee of 29 years of service for which, the petitioner rendered all most 27 years as a coal filler. The petitioner was issued a charge sheet No.RG.I/GDK-6 A/R.08/5136, dt.20-12-2005, while the he was working under GDK.VI-A Incline with the following charges:-

1. Theft, fraud or dishonesty in connection with the employer's business property.

2. Any willful and deliberate act which is subversive of discipline or which may be detrimental to the interest of company.

4. Allegation against the petitioner is while the petitioner was working on 20-12-2005, the petitioner allowed pilferage of coal through transport contractor by not ensuring maintenance of proper record of coal issued from the bunker as it is an offence under standing order. The

petitioner submitted his explanation. He also participated in enquiry proceedings wherein it is clearly mentioned that no loss is effected to company and the petitioner also signed on the enquiry reports which was countersigned by Routhu Mallaiah and no material is taken into count and the respondent effected dismissal order dt.5-5-2010. The respondent adopted unfair labour practice and victimized the petitioner under the Act.

5. The respondent never considered the past service of petitioner of 29 years and the petitioner also preferred an appeal to Director, PA & W. SC company dt.1-6-2010. The respondent did not consider his appeal. The punishment is disproportionate to the alleged misconduct and therefore petitioner may be reinstated into service with continuity and other attendant benefits, full back wages or VRS or VRS GHS by setting aside the termination order dt. 5-5-2010.

6. R-1 filed counter adopted by R-2 stating that the Respondents Company is a Central Government and therefore this Court has no jurisdiction. The petitioner was appointed in the respondents' company on 21-10-1983 as Badli Filler and posted to work at GDK.No.6A Incline. The management had introduced Voluntary Retirement Scheme (Golden Shake Hand) during the years from 2000 to 2005 to various categories of employees with certain conditions. The workmen who are issued charge sheets under company standing orders and pending enquiries or punished with proved misconduct are not eligible for the above scheme.

7. The petitioner worked as Coal Filler at GDK.6-A Incline and his services were utilized as Bunker door Mazdoor/Chainman as and when required. The Vigilance Department of the respondent company during its verification on the alleged mis-appropriation/discrepancies in coal transportation from mines to coal screening plants during the period from 01-09-2005 to 07-10-2005 detected certain irregularities at GDK.6A Incline. During the suspension period, he was paid subsistence allowance as per the company's standing orders.

8. On 7-10-2005 in 2nd shift, while the petitioner was working as bunker door mazdoor/chainman issued one trip of coal to lorry No.AP15W 8050 without recording the same in his records thereby allowed pilferage of coal by coal transport contractor with malafide intention which is a misconduct under Clause No.25.1 and 25.23 of company's standing orders. Thus the act of the petitioner might cause loss to the company to a tune of Rs.15,000/- towards cost of the coal. As such, he was issued charge sheet dt. 20-12-2005. The petitioner received charge sheet and submitted his explanation. The enquiry officer issued notice to the petitioner and the petitioner participated in the enquiry. A fair opportunity was given to the petitioner and the petitioner participated in the enquiry. The petitioner after receipt of the dismissal order submitted his appeal on 1-6-2010 to the appellate authority. The appellate authority examined the appeal and after examination, confirmed the dismissal order and the same was communicated to the petitioner. Therefore, the petition may be dismissed.

9. Heard both sides. Perused the material papers on record.

10. In the course of hearing petitioner filed memo under Sec.11-A of I.D Act on 3-3-2014 stating that the petitioner is admitting the procedure of enquiry conducted by the respondents and prayed to decide the case on the basis of the material available on record.

11. During the course of enquiry, Ex.M-1 to Ex.M-11 are marked on behalf of the respondents and no documents are marked on behalf of the petitioner.

12. For the consideration of respective contentions of the parties the following points required to be determined:-

1. "Whether this Tribunal has got jurisdiction?"

2. "Whether the punishment of dismissal of the petitioner is justified and proportionate?"

13. POINT No. 1

As per the Judgment of High Court reported in 1997 (III) LLJ (Supp.) 11 between U. Chinnappa And Cotton Corporation of India, this Court has got jurisdiction to entertain the dispute raised by the petitioner.

This point is accordingly answered in favour of the petitioner.

14. POINT No. 2

The suspension order is marked as Ex.M-1 and charge sheet is marked as Ex.M-2. It is alleged that the petitioner with a malafide intention paved way for pilferage of one trip of coal worth Rs.15,000/- by the coal transport contractor, on 7-10-2005. Ex.M-3 is explanation submitted by the petitioner. The petitioner was deployed as acting Bunker Chainman as and when his services were required and originally he is Coal Filler by designation. He is illiterate. On 7-10-2005 lorry No.AP-15-W-8050 took one load of coal, the petitioner went to the shift Overman and reported the same. After a lapse of 2 months, charge sheet was issued. Enquiry report is marked as Ex.M-4. The record placed before this court shows that the above one lorry load coal was dumped at CSP-I of the respondents and it was not taken outside. This fact is admitted by the respondents. No theft of coal was committed by the petitioner, lorry driver or the coal contractor; but it is alleged that the petitioner issued one trip of coal without recording the same in the relevant records. Admittedly the petitioner is a coal filler and is an illiterate.

The petitioner was appointed as badli filler on 21-10-1983 and worked till the date of his dismissal from

service w.e.f., 5-5-2010. He has put in a long service of 27 years. The lorry driver was not examined by the respondents in the enquiry, for the reasons best known to them. The coal was dumped in the CSP-I coal yard of the respondents. There was no loss of coal to the respondents company. No nexus between the lorry driver and petitioner is alleged.

15. Under the above peculiar circumstances of the case, I hold that the extreme punishment of dismissal from service imposed by the respondents is shockingly disproportionate and it is liable to be modified as voluntary retirement of the petitioner w.e.f., 5-5-2010 without the benefit of dependent employment, instead of dismissal from service.

16. In the result, the order of dismissal dated 02-05-2010 marked as Ex.M-9 dismissing the petitioner from service w.e.f., 5-5-2010 is modified as voluntary retirement of the petitioner w.e.f., 5-5-2010 without the benefit of dependent employment, instead of dismissal from service. The petitioner is not entitled to any back wages. However, the petitioner shall be paid all consequential benefits of voluntary retirement from service, except dependent employment.

Typed to my dictation, corrected and pronounced by me in the open court on this the 1st day of May, 2014.*

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman	For Management
-Nil-	-Nil-

EXHIBITS

For workman:-

-Nil-

For Management:-

Ex.M-1	Dt.	25-11-2005	Suspension letter
Ex.M-2	Dt.	20-12-2005	Charge sheet
Ex.M-3	Dt.	23-12-2005	Reply to charge sheet
Ex.M-4	Dt.	12-02-2008	Enquiry proceedings
Ex.M-5	Dt.	—	Enquiry report
Ex.M-6	Dt.	25-06-2009	Show cause notice
Ex.M-7	Dt.	02-07-2009	Ack., to Show cause notice
Ex.M-8	Dt.	08-07-2009	Reply to show cause notice
Ex.M-9	Dt.	29-04-2010/ 02-05-2010	Office order (dismissal order)
Ex.M-10	Dt.	01-06-2010	Appeal submitted to the Director (PA&W), SCCL, Kothagudem.
Ex.M-11	Dt.	11-02-2011	Letter issued to the petitioner by Director, PA&W, Kothagudem.

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